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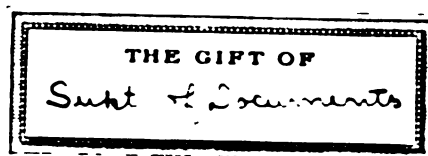
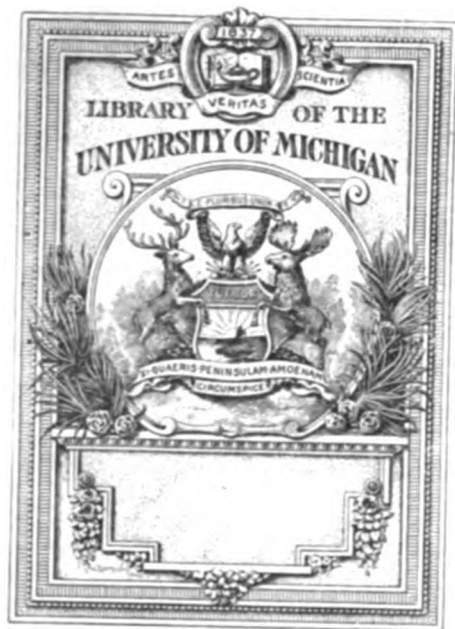
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VOLUME XVIII

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DECISIONS OF THE

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OF THE UNITED STATES

FEBRUARY, 1910, TO JUNE, 1910

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# INTERSTATE COMMERCE COMMISSION.

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MARTIN A. KNAPP, OF NEW YORK, Chairman.

JUDSON C. CLEMENTS, OF GEORGIA.

CHARLES A. PROUTY, OF VERMONT.

FRANCIS M. COCKRELL, OF MISSOURI.

FRANKLIN K. LANE, OF CALIFORNIA.

EDGAR E. CLARK, OF IOWA.

JAMES S. HARLAN, OF ILLINOIS.

EDWARD A. MOSELEY, Secretary.





# INTERSTATE COMMERCE COMMISSION REPORTS.

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No. 2617.

VIRGINIA-CAROLINA CHEMICAL COMPANY

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY  
COMPANY ET AL.

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*Submitted February 5, 1910. Decided February 17, 1910.*

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Defendants' rates on fertilizer from Memphis, Tenn., to points upon their various lines in Arkansas found unreasonable, and reasonable maximum rates prescribed for the future. Case retained for further proceedings as to reparation.

*Payne, Little & Jones* for complainant.

*Martin L. Clardy* and *James C. Jeffery* for defendants.

## REPORT OF THE COMMISSION.

**PROUTY, Commissioner:**

The complaint alleges that the carload and less-than-carload rates established by the defendants for the transportation of fertilizer from Memphis, Tenn., to points upon their various lines in the state of Arkansas, are unreasonable, and asks for the establishment of reasonable rates. The St. Louis, Iron Mountain & Southern Railway is in all cases the initial carrier, which hauls the traffic out of Memphis. The other defendants are connections of the Iron Mountain and the rates now in effect to points upon their lines are joint rates. The defendants have been notified, have appeared, and have been fully heard.

As to carload rates this case must be largely controlled by *Virginia-Carolina Chemical Co. v. St. L. S. W. Ry. Co.*, 16 I. C. C. Rep., 49. The relation between carload and less-than-carload shipments was not fully considered in that case and we feel that the difference there established was somewhat too wide. Fertilizer is a commodity which ought ordinarily to move in carloads at a low rate, but there is also

considerable movement in less than carloads, especially in sections where its use has not become extensive.

We are of the opinion that rates named in the table below are reasonable for the transportation of fertilizer from Memphis, Tenn., to points upon the lines of the defendants in the state of Arkansas; that those rates ought not to be exceeded for the future, and that the rates of the defendants now in effect are unreasonable by the amount that they exceed the rates named.

*Fertilizer rates, in cents per 100 pounds.*

Distance, miles.	Carload (minimum 80,000 pounds).	Less than carload.
	Cents.	Cents.
5 and under.....	5	10
25 and over 5.....	6	12
50 and over 25.....	7	14
75 and over 50.....	8	16
100 and over 75.....	9	18
150 and over 100.....	10	20
200 and over 150.....	11	22
250 and over 200.....	12	24
300 and over 250.....	13	26
350 and over 300.....	14	28
400 and over 350.....	15	30

The original complaint made no claim for reparation, but, upon the argument, the complainant asked leave to amend its petition by setting forth certain shipments made by it and asking reparation with respect to those shipments, and the filing of this amendment was allowed. Reparation will be awarded with respect to shipments mentioned in this amendment upon due proof on the basis of the rates above fixed. If any question arises under the statute of limitations, the date of the filing of this amendment will be regarded as the date of the filing of the claim with the Commission.

An order will be issued establishing the rates found reasonable, and the case will be retained for further proceedings as to reparation.

18 I. C. C. Rep.

No. 2151.

VIRGINIA-CAROLINA CHEMICAL COMPANY  
v.  
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

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*Submitted February 5, 1910. Decided February 17, 1910.*

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Defendant's rates on fertilizer from Memphis, Tenn., to points on its line in Arkansas found unreasonable, and reasonable maximum rates prescribed for the future. Case retained for further proceedings as to reparation.

*Payne, Little & Jones* for complainant.

*E. B. Peirce, Wallace T. Hughes, M. L. Bell, and W. F. Dickinson* for defendant.

*F. S. Williams* for Arkansas Fertilizer Company, intervener.

REPORT OF THE COMMISSION.

**PROUTY, Commissioner:**

The complaint alleges that the carload and less-than-carload rates established by the defendant for the transportation of fertilizer from Memphis, Tenn., to points upon its various lines in the state of Arkansas are unreasonable and asks for the establishment of reasonable rates. The defendant has been notified, has appeared, and has been fully heard.

This case is controlled by *Virginia-Carolina Chemical Co. v. St. L., I. M. & S. Ry. Co.*, 18 I. C. C. Rep. 1.

We are of the opinion that the rates named in the table below are reasonable for the transportation of fertilizer from Memphis, Tenn., to points upon the lines of the defendant in the state of Arkansas; that those rates ought not to be exceeded for the future, and that the rates of the defendant now in effect are unreasonable by the amount that they exceed the rates named.

18 I. C. C. Rep.

*Fertilizer rates, in cents per 100 pounds.*

Distance, miles.	Carload, (minimum 80,000 pounds).	Less than carload.
	<i>Cents.</i>	<i>Cents.</i>
5 and under.....	5	10
25 and over 5.....	6	12
50 and over 25.....	7	14
75 and over 50.....	8	16
100 and over 75.....	9	18
150 and over 100.....	10	20
200 and over 150.....	11	22
250 and over 200.....	12	24
300 and over 250.....	13	26
350 and over 300.....	14	28
400 and over 350.....	15	30

The original complaint made no claim for reparation, but, upon the argument, the complainant asked leave to amend its petition by setting forth certain shipments made by it and asking reparation with respect to those shipments, and the filing of this amendment was allowed. Reparation will be awarded with respect to shipments mentioned in this amendment upon due proof on the basis of the rates above fixed. If any question arises under the statute of limitations the date of the filing of this amendment will be regarded as the date of the filing of the claim with the Commission.

An order will be issued establishing the rates found reasonable, and the case will be retained for further proceedings as to reparation.

18 I. C. C. Rep.

No. 2618.

## VIRGINIA-CAROLINA CHEMICAL COMPANY

v.

## ST. LOUIS &amp; SAN FRANCISCO RAILROAD COMPANY.

*Submitted February 5, 1910. Decided February 17, 1910.*

Defendant's rates on fertilizer from Memphis, Tenn., to points on its line in Arkansas found unreasonable, and reasonable maximum rates prescribed for the future. Case retained for further proceedings as to reparation.

*Payne, Little & Jones* for complainant.

*E. B. Peirce, Wallace T. Hughes, and Fred. H. Wood* for defendant.

## REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The complaint alleges that the carload and less-than-carload rates established by the defendant for the transportation of fertilizer from Memphis, Tenn., to points upon its line in the state of Arkansas are unreasonable, and asks for the establishment of reasonable rates. The defendant has been notified, has appeared, and has been fully heard.

This case is controlled by *Virginia-Carolina Chemical Co. v. St. L., I. M. & S. Ry. Co.*, 18 I. C. C. Rep., 1.

We are of the opinion that the rates named in the table below are reasonable for the transportation of fertilizer from Memphis, Tenn., to points upon the line of the defendant in the state of Arkansas; that those rates ought not to be exceeded for the future, and that the rates of the defendant now in effect are unreasonable by the amount that they exceed the rates named.

Fertilizer rates, in cents per 100 pounds.

Distance, miles.	Carload (minimum 30,000 pounds).	Less than carload.
	Cents.	Cents.
5 and under.....	5	10
25 and over 5.....	6	12
50 and over 25.....	7	14
75 and over 50.....	8	16
100 and over 75.....	9	18
150 and over 100.....	10	20
200 and over 150.....	11	22
250 and over 200.....	12	24
300 and over 250.....	13	26
350 and over 300.....	14	28
400 and over 350.....	15	30

The original complaint made no claim for reparation, but upon the argument the complainant asked leave to amend its petition by setting forth certain shipments made by it and asking reparation with respect to those shipments, and the filing of this amendment was allowed. Reparation will be awarded with respect to shipments mentioned in this amendment upon due proof on the basis of the rates above fixed. If any question arises under the statute of limitations, the date of the filing of this amendment will be regarded as the date of the filing of the claim with the Commission.

An order will be issued establishing the rates found reasonable, and the case will be retained for further proceedings as to reparation.

18 I. C. C. Rep.

No. 1699.  
UNITED STATES  
v.  
DENVER & RIO GRANDE RAILROAD COMPANY.

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*Submitted July 5, 1909. Decided January 11, 1910.*

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The demurrage charges in question were not assessed in accordance with any provision in defendant's tariff and therefore do not constitute a valid claim against complainant.

*Wade H. Ellis, Edwin P. Grosvenor, and Hiram E. Booth* for complainant.

*E. N. Clark and E. M. Allison* for defendant.

REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

This is a complaint that the charge by defendant of \$440 demurrage on certain carloads of cement detained at Thistle Junction, Utah, is unreasonable and unjust.

Prior to May 1, 1906, the Reclamation Service of the Government began the prosecution of an irrigation project at Strawberry Valley, in the state of Utah. It became apparent that large quantities of material, including cement, would be required in connection with the work of erecting dams, tunnels, ditches, etc. The nearest station to Strawberry Valley on defendant's line is distant about 6½ miles. This station is known as Thistle Junction, where an agent of complainant is employed. In order to avoid the delay and expense incident to a wagon haul for the whole distance from Thistle Junction to Strawberry Valley, the officers of the Reclamation Service took up with defendant the matter of constructing a spur or siding at a point nearer the work, where delivery of material and supplies could be made; and during the year 1906 a switch 700 feet long and connected at either end with the main line of defendant was constructed on defendant's right of way at the joint expense of the Government and defendant. The connection of the switch with the rails of defendant was at Mile Post No. 679, about 2½ miles west from Thistle Junction. Although the Government contributed to the expense of constructing

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this switch, it was not a private switch but became upon completion the sole property of defendant and a part of its railway facilities.

During the month of July, 1907, 52 cars of cement were shipped from Independence, Kans., billed to complainant at "Mile Post 679, near Thistle Junction." It appears that these cars were received at Thistle Junction as follows: July 6, two cars; July 11, nine cars; July 12, eight cars; July 13, six cars; July 14, five cars; July 15, four cars; July 16, five cars; July 22, seven cars; July 24, two cars; and July 26, four cars. Commencing July 8 and continuing until July 30 deliveries of two cars of cement per day were made from Thistle Junction to the siding in question, and from and after that date four cars per day were delivered. On the cars remaining undelivered at Thistle Junction from time to time there accrued the \$440 demurrage complained of. At the time the cement reached Thistle Junction complainant could not use it on the work. A storage house had been built prior to the receipt of the first cars of cement, and others were in course of construction during the latter part of July and the early part of August. These warehouses were built alongside the switch, and the cement was taken from the cars and stored therein. After the switch was constructed the defendant permitted a stone company to erect a derrick about midway and served it with cars. It is alleged in the complaint that the occupation of the switch by the stone company was a serious inconvenience to complainant, but the evidence fails to sustain this allegation. Between the clearance of the switch and the derrick there was room for nine 37-foot cars, and the cement was received for the most part in cars of that length.

There was sharp dispute at the hearing as to whether the Government's representatives ordered that no more than two cars per day should be delivered at the switch during the first part of July, and no more than four cars per day from the latter part of that month, but it seems to us immaterial whether such orders were given or not.

Sections 1 and 2 of Rule 5 of the Utah Car Service Association, I. C. C. No. 2, to which the defendant is a party, filed by the Utah Car Service Association, effective August 28, 1906, and in effect at the time the demurrage is alleged to have accrued, provide as follows:

SECTION 1. Cars containing freight to be delivered on carload delivery tracks or private sidings shall be placed on the tracks designated immediately upon arrival, or as soon thereafter as the ordinary routine of yard work will permit. Delivery will not be made on specially designated yard or tracks except when it is practicable to do so. When such delivery can not be made, on account of such tracks being fully occupied, or for any other reasons beyond the control of the carrier, delivery shall be made at the nearest available point.

SEC. 2. Delivery of cars shall be considered to have been effected at the time when such cars have been placed on the proper private or public delivery tracks, or if such track or tracks already contain such number of cars belonging to the same consignee

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as prevent prompt delivery, then such cars will be considered as having been placed when the road offering the cars would have delivered them had the condition of such tracks permitted.

The imposition of demurrage charges, if authorized at all, must have been provided for in these sections, as the tariffs of defendant in effect at the time show no other or different demurrage provision. Demurrage does not ordinarily accrue except upon delivery of cars at the point specified in the bill of lading, and where charges are imposed for detention of cars at a point other than that so specified there must be definite tariff authority therefor. *Germain Co. v. N. O. & N. E. R. R. Co.*, 17 I. C. C. Rep., 22; *Munroe & Sons v. Mich. Cent. R. R. Co.*, 17 I. C. C. Rep., 27.

The sections above quoted state in clear terms the circumstances under which demurrage will accrue at a point of delivery not named in the bill of lading. As will be noted, reading the two sections together, the tariff provides that delivery of cars to a private or public track specified shall be considered to have been effected at the time when such cars have actually been placed thereon, and if the track is filled with cars billed to same consignee so that more cars can not be placed thereon, delivery will be considered to have been made when they are placed on the nearest available track.

It was the duty of defendant, under the provisions of its tariffs, before it would be authorized to assess and collect demurrage on a track other than that named in the bill of lading, to place at the disposition of complainant all the cars which the specified delivery siding could contain. The evidence shows that the siding could easily have contained nine cars. It further appears that at no time were more than nine cars received for complainant at Thistle Junction in any one day. At no time was the switch at Mile Post 679, to which the cars were billed, filled with cars consigned to complainant. It is obvious that had the cars been delivered at the tracks specified in the bill of lading in sufficient number to have filled it, and complainant had not unloaded then within the time named in the tariff, demurrage would properly have accrued upon that siding.

The fact, if it be a fact, that complainant ordered the delivery of two cars per day at one time and four cars at another did not warrant the imposition of demurrage charges for which there was no tariff authority. It is not claimed by defendant that placing the cars on tracks at Thistle Junction was delivery at the switch specified, but the contention is made that in order to accommodate complainant cars were placed on this switch from day to day in the limited numbers above stated, the balance being held at Thistle Junction. Assuming that this was done, it did not authorize the charging of demurrage on the cars held at the latter station. It follows that the

18 I. C. C. Rep.

charges in question were not assessed in accordance with any provision in defendant's tariff and therefore do not constitute a valid claim against complainant. If the provisions subsequently inserted and now appearing in defendant's tariff had been in force at the time, demurrage would have accrued on cars held at Thistle Junction by direction of complainant. We rest our decision of this case on the proposition that demurrage can be assessed only in accordance with tariff provisions, and that the Rules of the Utah Car Service Association in effect when these cars were delivered did not authorize the demurrage charges in question.

It appears that the amount of the demurrage has not been paid by complainant. The usual method to pursue in such cases is to pay the charges under protest and then file complaint with the Commission, when, if the complaint is sustained, an order is entered directing the carrier to make the proper refund. Under the circumstances in this case no order is necessary.

PROUTY, *Commissioner*, dissenting:

I am unable to agree with the disposition of this case. The tariffs of the defendant in force at the time provided that when cars were consigned to a private siding, demurrage should not begin to accrue until they had been placed upon such siding, *unless* such placement was prevented by "reasons beyond the control of the carrier."

In this case the car was billed to the switch of the complainant. Thistle Junction was the nearest point to that switch. The cars were taken to Thistle Junction and were delivered at the switch, two cars per day during a portion of the time, and four cars per day during the remainder of the time. It is conceded that if the balance of the cars at Thistle Junction were not delivered for *a reason beyond the control of the carrier*, the demurrage properly accrued, and the only question is whether the act of the carrier in retaining the cars at Thistle Junction was induced by a reason beyond its control.

The switch upon which these cars were to be delivered had been constructed at the joint expense of the United States and the defendant railroad, and both parties claimed the right to control it. It was intended primarily for the accommodation of the Government in its reclamation work.

The giving of the direction by the Government to place but two cars daily on this switch was a thing over which the carrier had no control, and, under the circumstances, it seems to me that the defendant might properly obey this instruction and that the complainant can not be heard to urge the contrary. It is a novel proposition that the United States can defeat the right of the defendant to the demurrage which properly accrued for the detention of these cars at Thistle Junction by showing that the defendant obeyed its instructions.

18 I. C. C. Rep.

No. 2442.  
**LANING-HARRIS COAL & GRAIN COMPANY**  
*v.*  
**CHICAGO, BURLINGTON & QUINCY RAILROAD  
 COMPANY.**

---

*Submitted November 5, 1910. Decided February 7, 1910.*

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Defendant's rate on anthracite coal from Chicago, Ill., to Akron, Colo., found unreasonable, and reasonable maximum rate prescribed for the future. Reparation awarded.

*C. W. Durbin* for complainant.

*C. M. Dawes, J. E. Kelby, and G. H. Crosby* for defendant.

**REPORT OF THE COMMISSION.**

**CLEMENTS, Commissioner:**

This complaint, filed May 5, 1909, alleges that defendant's rate of \$8 per ton for the transportation of anthracite coal from Chicago, Ill., to Akron, Colo., is unreasonable and unjust to the extent that it exceeds \$6.70, the rate formerly in effect. Reparation is asked on a shipment of one carload from Chicago to Akron moving on September 6, 1907.

We find that from January 1, 1901, to January 1, 1907, defendant's rate on this commodity from Chicago to Akron, a distance of 906.4 miles, was \$6.70. From January 1, 1901, to March 7, 1902, this rate was applicable to a minimum carload of 30,000 pounds, and from March 7, 1902, to January 1, 1907, to a minimum of 40,000 pounds. No through rates appear to have been in effect from January 1, 1907, to January 20, 1908, but on the last-named date the present rate of \$8 per ton, minimum carload 40,000 pounds, was established and has since remained in effect. This rate yields about 9 mills per ton per mile.

Defendant's rate from Chicago to Haigler, Nebr., a distance of 836 miles, from January 1, 1901, to June 22, 1905, was \$5 per ton, yielding about 6 mills per ton per mile. On the date last named this rate was reduced to \$4.94 and subsequently has been further reduced to the present rate of \$4.639, yielding about 5½ mills per ton per mile.

18 I. C. C. Rep.

Defendant's rate from Chicago to Cheyenne, Wyo., a distance of 1,023 miles, is \$8, yielding less than 8 mills per ton per mile.

The defendant also had in effect at the time of the shipment in question and still maintains a local distance tariff in which anthracite coal is included in Class D at 12½ cents per 100 pounds applicable to a haul of 70 miles, the distance from Haigler to Akron. This rate yielding over 3½ cents per ton per mile would make a rate of \$2.55 per ton which, added to the rate of \$4.639, would produce a combination through charge of \$7.189, or a total charge of 81.1 cents less than the rate of \$8 per ton now in effect and charged on this shipment.

It is asserted by the defendant that the present rate from Chicago to Haigler is not regarded by it as sufficiently remunerative and that it has been produced in part by rates established by the legislature of Nebraska which are being contested by the defendant. The theory of the defendant appears to be that state legislation effective July 5, 1907, which reduced the rate from Omaha to Haigler, affected the rate from Chicago to Haigler. As we have seen, however, defendant's rate from January 1, 1901, to June 22, 1905, prior to the legislation referred to, was \$5 from Chicago to Haigler, which, added to the rate from Haigler to Akron of \$2.55 as above stated, would make \$7.55, or a total of 45 cents less than defendant's present rate complained of. Defendant also had established, effective June 22, 1905, also prior to this legislation, a rate of \$4.94 from Chicago to Haigler which remained in effect until January 20, 1908, when the rate was further reduced to \$4.634, and on February 21, 1908, the present rate above stated was put into effect.

We find also that on September 6, 1907, complainant shipped over the defendant's line, as alleged, one carload of anthracite coal, weighing 49,000 pounds, from Chicago, Ill., to Akron, Colo., upon which there was demanded and collected by defendant and paid by complainant, through his consignee at Akron, \$196 on the basis of \$8 per ton.

It is the opinion of the Commission, upon full hearing and consideration of all the facts, circumstances, and conditions appearing, that defendant's said rate of \$8 per ton was at the time of the shipment referred to and is unjust and unreasonable to the extent that the same exceeds \$7 per ton. It is also our conclusion that the rate to be charged as the maximum in the future should not exceed \$7 per ton. We further find that complainant is entitled to an award of reparation against the defendant in the sum of \$24.50, with interest.

An order will be entered in accordance with these findings and conclusions.

No. 2602.  
STONE-ORDEAN-WELLS COMPANY  
v.  
SOUTHERN PACIFIC COMPANY ET AL.

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*Submitted September 27, 1909. Decided March 8, 1910.*

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Through rates on canned goods from San José, Cal., to Roundup, Mont., found to be excessive and reparation awarded.

*Alexander Marshall* for complainant.

*F. C. Dillard, P. F. Dunne, C. W. Durbrow and W. F. Herrin* for Southern Pacific Company.

*C. W. Bunn and Charles Donnelly* for Northern Pacific Railway Company.

*E. D. Sewall* for Montana Railroad Company.

*William Ellis and F. G. Wright* for Chicago, Milwaukee & Puget Sound Railway Company.

REPORT OF THE COMMISSION.

**PROUTY, Commissioner:**

This case involves the through rate on canned goods from San José, Cal., to Roundup, Mont. On November 23, 1908, the complainant shipped one carload of canned goods, weight 43,300 pounds, from San José to Roundup, for the transportation of which the defendants charged a commodity rate of \$1.10 per 100 pounds from San José to Harlowton, Mont., plus the local fifth class rate of 24 cents from the latter place to Roundup, collecting a total charge of \$580.22. The complaint as amended at the hearing charges that any rate on canned goods from San José to Roundup in excess of \$1.24 per 100 pounds, made up of a rate of \$1 to Harlowton, plus the local rate of 24 cents from Harlowton to Roundup, was and is unreasonable, and reparation is asked. In this case the through rate is alleged to be unreasonable because the part up to Harlowton is unreasonable, the local to Roundup not being complained of.

Canned goods, as shown by the evidence in this case, as well as by the classifications adopted by the defendants, is, for transportation

18 I. C. C. Rep.

purposes, a commodity of lower grade than dried fruit. Under the Western Classification dried fruit takes fourth class and canned goods take fifth class rates. The commodity rate on dried fruit in boxes at the time of shipment from San José to Harlowton was \$1.10 per 100 pounds.

We are of the opinion and find that any rate upon canned goods in carloads from San José, Cal., to Harlowton, Mont., when for beyond, in excess of \$1 per 100 pounds, minimum weight 40,000 pounds, was and is unreasonable; that the complainant is entitled to reparation in the sum of \$43.30, with interest, against the Southern Pacific Company, Northern Pacific Railway Company, and Montana Railroad Company, these being the lines carrying the traffic up to Harlowton; and that such rate ought not to be exceeded for the future.

An order will be entered accordingly.

18 I. C. C. Rep.

No. 2603.  
STONE-ORDEAN-WELLS COMPANY  
v.  
SOUTHERN PACIFIC COMPANY ET AL.

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*Submitted September 27, 1909. Decided March 8, 1910.*

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Through rates on dried fruit from Fresno, Cal., to Roundup, Mont., found to be excessive and reparation awarded.

*Alexander Marshall* for complainant.

*F. C. Dillard, P. F. Dunne, C. W. Durbrow, and W. F. Herrin* for Southern Pacific Company.

*C. W. Bunn and Charles Donnelly* for Northern Pacific Railway Company.

*E. D. Sewall* for Montana Railroad Company.

*William Ellis and F. G. Wright* for Chicago, Milwaukee & Puget Sound Railway Company.

REPORT OF THE COMMISSION.

*PROUTY, Commissioner:*

This complaint involves a shipment of one carload of dried fruit from Fresno, Cal., to Roundup, Mont., made November 27, 1908. The weight was 38,100 pounds and an aggregate charge of \$634.35 was collected, based on the following combination: From Fresno to Lathrop, Cal., the local fourth class rate of  $37\frac{1}{2}$  cents; Lathrop to Harlowton, Mont., \$1; and from Harlowton to Roundup the local fourth class rate of 29 cents, making a combination through rate of \$1.66 $\frac{1}{2}$  per 100 pounds. The complaint was amended at the hearing so as to ask for the establishment of a rate not to exceed \$1.39, based on the Commission's decision in a former case brought by the same complainant, involving shipment of the same commodity, from same point of origin to Billings, Mont. (16 I. C. C. Rep., 313.)

In the former case the same method of rate making was employed, viz, the fourth class of  $37\frac{1}{2}$  cents to Lathrop and \$1 to destination. This was found to result in the imposition of an unreasonable rate, and a rate of \$1.10 was prescribed for the future. It should be noted that  
18 I. C. C. Rep.,



The Commission has no authority to establish, in the first instance, the rates of the defendant. The act to regulate commerce requires these rates to be filed with the Commission, and authority is given to it to investigate upon complaint the rates so filed, and to prescribe other rates in substitution for the future, provided those established are found to be in violation of the act. The defendant does not, in handling these small packages or in filing its tariffs applicable thereto, transgress any provision of the act which we administer. If we were satisfied that such action upon the part of the defendant was in violation of the federal statutes, we could not, for that reason, order it to cease and desist from such practice; nor could we require it to withdraw its tariffs.

Since we can grant no relief in this proceeding, it is not necessary nor appropriate to inquire whether Congress possesses the constitutional authority to create in the Government a monopoly of transporting packages and books as claimed by the complainant; nor whether, if the constitutional power exists, it has ever been exercised.

The complaint will be dismissed; but a copy of the record will be transmitted to the Attorney-General of the United States for his information.

18 I. C. C. Rep.

No. 2683.

ACME CEMENT PLASTER COMPANY

v.

CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

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Submitted January 7, 1910. Decided March 8, 1910.

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1. Defendants' rates on cement plaster from Gypsum and Council Bluffs, Iowa, to certain points in South Dakota and North Dakota found unreasonable, and reasonable maximum rates prescribed for the future. Reparation denied.
2. A common carrier can not impose an unreasonable rate because of the origin of the traffic.
3. The minimum carload weight upon cement plaster as applied to the rates above established ought not to exceed 30,000 pounds.
4. To whatever points a minimum carload weight of 60,000 pounds on cement plaster is accorded from Gypsum, Iowa, the same minimum weight, with a corresponding reduction in the rate, should be given from Council Bluffs, Iowa.
5. It seems that in the making of rates from Rapid City, S. Dak., to Missouri River points on cement plaster, where competition from both Gypsum and Laramie, Wyo., must be met, certain intermediate points in this territory are given a lower rate than would otherwise be accorded and a rate somewhat lower in proportion to distance than is made from Gypsum or Council Bluffs; *Held*, That the apparent discrimination is, under all the circumstances, not undue.

*S. H. Cowan* and *J. B. Daish* for complainant.

*G. B. Winston* for Chicago Great Western Railway Company and receivers.

*W. S. Kenyon* and *M. F. Watts* for Illinois Central Railroad Company.

*William Ellis* for Chicago, Milwaukee & St. Paul Railway Company.

*Edson Rich* for Union Pacific Railroad Company.

#### REPORT OF THE COMMISSION.

**PROUTY, Commissioner:**

This complaint puts in issue the following matters:

1. The inherent reasonableness of rates on cement plaster from Gypsum, Iowa, to certain points of destination upon the Chicago, Milwaukee & St. Paul Railway in the states of South Dakota and North Dakota.

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2. The inherent reasonableness of rates on the same commodity from Council Bluffs, Iowa, to the same points of delivery.

3. The alleged discrimination in rates in favor of Gypsum as against Council Bluffs.

4. The alleged discrimination in rates from Rapid City as compared with both Council Bluffs and Gypsum.

The complainant manufactures plaster cement at Gypsum, Iowa, and this commodity is also manufactured by the competitors of the complainant at Gypsum and at Fort Dodge, Iowa, which is in the immediate vicinity of Gypsum and takes the same rates to all points. The rates from Gypsum, which are attacked in this complaint, are made jointly by the Chicago Great Western, the Illinois Central, and the Chicago, Milwaukee & St. Paul; but the greater part of the haul is over the latter road, which assumes the burden of the defense.

The cement plaster manufactured at Gypsum sells for from \$2 to \$3 per ton f. o. b. that point. It easily loads to the marked capacity of the car and is not liable to loss or damage in transit. It is an article of universal use in the construction of houses and other buildings. The complainant insists that this commodity ought to be accorded an extremely low transportation charge, and his case rests really upon the fact that the ton-mile rate applied from these points is higher than it should be, being from 10 to 15 mills per ton-mile. The complainant asserts that these rates ought not to exceed 8 or 9 mills per ton-mile for the distances involved, which are from 150 to 550 miles.

It can not be denied that this commodity is entitled, upon every consideration, to a low rate; but it is hardly possible to compare the ton-mile charge which may be properly made in this territory with the ton-mile charge which should be made in other territory where traffic is more dense and cost of operation less. The real question is not what ton-mile revenue do these rates yield, but, rather, how do these rates compare with others in this locality, it being remembered that there is no allegation that the general body of rates in this section is materially too high and no evidence to sustain such a claim.

The complaint refers to several hundred points of delivery. Selecting what seem to be representative rates, we find that these charges from Gypsum on cement plaster are materially less than those applied to lumber, somewhat less than those applied to wheat, but little in excess of rates on brick, and about one-half the rate on cattle. This would indicate that these rates from this point are not greatly out of line with rates generally prevailing, to which, however, stations between the Missouri River and Rapid City are an exception.

We are of the opinion that rates from Gypsum to most points specified by the complainant are reasonable, but that to the points

named in the table below those in the column marked "Present rates" are unreasonable, and that carload rates should be established not exceeding, in cents per 100 pounds, those named in the column marked "Future rates."

	Present rate.	Future rate.		Present rate.	Future rate.
	<i>Cents.</i>	<i>Cents.</i>		<i>Cents.</i>	<i>Cents.</i>
Reliance, S. Dak.....	25½	21	Weta, S. Dak.....	33½	27
Kennebec, S. Dak.....	25½	21	Interior, S. Dak.....	33½	27
Presbo, S. Dak.....	25½	22	Conata, S. Dak.....	34½	28
Vivian, S. Dak.....	25½	22	Imlay, S. Dak.....	35½	28
Draper, S. Dak.....	28½	23	Scenic, S. Dak.....	37½	29
Murdo Mackenzie, S. Dak.....	30½	24	Creston, S. Dak.....	39	29
Okaton, S. Dak.....	30½	24	Farmingdale, S. Dak.....	42½	30
Stamford, S. Dak.....	31½	25	Caputa, S. Dak.....	44½	30
Belvidere, S. Dak.....	31½	25	Rapid City, S. Dak.....	44½	31
Kadoka, S. Dak.....	32½	26			

Cement plaster is not manufactured at Council Bluffs, but the complainant operates a mill at Laramie, Wyo., from which the plaster is brought by the Union Pacific to Council Bluffs. The distance between these points is 577 miles, and the rate now in effect via the Union Pacific is 10 cents per 100 pounds in carloads, with a minimum of 60,000 pounds, and 15 cents per 100 pounds in carloads, with a minimum of 30,000 pounds. While the Union Pacific is made a party defendant to this proceeding no fault is found with its rates to Council Bluffs; nor is any order asked for against it.

There is no joint through rate from Laramie between the Union Pacific and the Chicago, Milwaukee and St. Paul, nor does the testimony clearly show whether the traffic moves upon through billing. The defendant seems to claim that it may protect the mills which it serves from Gypsum and from Rapid City, S. Dak., upon its own line, by imposing higher charges than would otherwise be proper, from Council Bluffs, upon the plaster of the complainant; but this contention we can not allow. Assuming, without deciding, that under these circumstances no joint through rate should be forced upon the Milwaukee company, and that that company might even decline to handle this business upon through billing, still it seems clear that the complainant is entitled to a rate from Council Bluffs which is inherently reasonable. The Milwaukee company can not impose an unreasonable charge because of the origin of the traffic.

Comparing rates on cement from Council Bluffs to the same representative points selected for comparison in case of rates from Gypsum, we find that they exceed the rates on lumber, are materially higher than those upon wheat and brick, and are only slightly lower than those upon cattle. This would indicate that, as compared with the general level of rates in that territory, these charges were too high.

At the same time there is no apparent reason why the rate on cement plaster from Council Bluffs should be lower for corresponding distances than from Gypsum. We are of the opinion that the present carload rates on cement plaster from Council Bluffs to the points named in the table below, in the column marked "Present rates," are unreasonable, and that those rates should not exceed, in cents per 100 pounds, the amounts named in the column marked "Future rates."

	Present rate.	Future rate.		Present rate.	Future rate.
	Cents.	Cents.		Cents.	Cents.
Canton, S. Dak.	15	13	Summit, S. Dak.	32	22
Parker, S. Dak.	16½	14	Waubay, S. Dak.	32	21
Marion Junction, S. Dak.	18	14	Webster, S. Dak.	32	21
Freeman, S. Dak.	18	15	Bristol, S. Dak.	26	20
Menno, S. Dak.	18	14	Andover, S. Dak.	26	21
Tuscan, S. Dak.	18	15	Pierpont, S. Dak.	26	21
Scotland, S. Dak.	18½	15	Langford, S. Dak.	27	21
Tyndall, S. Dak.	19	15	Spain, S. Dak.	28	22
Springfield, S. Dak.	19½	14	Britton, S. Dak.	28	22
Running Water, S. Dak.	19½	14	Newark, S. Dak.	28	23
Dalton, S. Dak.	18	15	Brampton, N. Dak.	28	23
Bridgewater, S. Dak.	18	15	Cogswell, N. Dak.	28	23
Emery, S. Dak.	18	15	Harlem, N. Dak.	28	23
Alexandria, S. Dak.	18	16	Groton, S. Dak.	25	21
Burton, S. Dak.	18	16	James, S. Dak.	25	21
Mitchell, S. Dak.	18	16	Bath, S. Dak.	25	22
Mount Vernon, S. Dak.	19	17	Mina, S. Dak.	27	22
Plankinton, S. Dak.	20	17	Ipewich, S. Dak.	27	22
White Lake, S. Dak.	21	18	Roscoe, S. Dak.	27	24
Kimball, S. Dak.	22	19	Bowdle, S. Dak.	28	25
Pukwana, S. Dak.	23	19	Java, S. Dak.	35	25
Chamberlain, S. Dak.	24	20	Selby, S. Dak.	35	26
Flandreau, S. Dak.	20	16	Glenham, S. Dak.	35	26
Egan, S. Dak.	20	15	Evarta, S. Dak.	35	27
Coleman, S. Dak.	21	16	Loyalton, S. Dak.	27	25
Wentworth, S. Dak.	21	16	Milford, S. Dak.	27	26
Madison, S. Dak.	21	17	Faulton, S. Dak.	27	26
Ramona, S. Dak.	21	17	Orient, S. Dak.	27	26
Oldham, S. Dak.	21	18	Hosmer, S. Dak.	28	25
Lake Preston, S. Dak.	21	18	Hillsview, S. Dak.	28	25
Erwin, S. Dak.	21	19	Eureka, S. Dak.	29	25
Bryant, S. Dak.	21	19	Greenway, S. Dak.	35	26
Vienna, S. Dak.	22	20	Zeeland, N. Dak.	35	26
Naples, S. Dak.	22	20	Hague, N. Dak.	35	27
Elrod, S. Dak.	22	20	Strasburg, N. Dak.	37	27
Garden City, S. Dak.	23	21	Linton, N. Dak.	37	28
Bradley, S. Dak.	24	21	Edgeley, N. Dak.	30	24
Lily, S. Dak.	25	21	Monango, N. Dak.	29	26
Butler, S. Dak.	25	22	Daune, N. Dak.	29	26
Junius, S. Dak.	21	17	Ellendale, N. Dak.	29	26
Winfred, S. Dak.	21	17	Winship, S. Dak.	28	23
Howard, S. Dak.	21	18	Frederick, S. Dak.	27	22
Vilas, S. Dak.	21	18	Westport, S. Dak.	26	22
Roswell, S. Dak.	21	18	Aberdeen, S. Dak.	25	21
Fedora, S. Dak.	21	18	Warner, S. Dak.	25	20
Artesian, S. Dak.	21	19	Duxbury, S. Dak.	25	20
Forestburg, S. Dak.	21	19	Mellette, S. Dak.	24	20
Lane, S. Dak.	23	20	Ashton, S. Dak.	23	20
Wessington Springs, S. Dak.	23	21	Redfield, S. Dak.	22	19
Fairmount, N. Dak.	34	26	Tulare, S. Dak.	22	20
Tyler, N. Dak.	35	27	Spottswood, S. Dak.	22	20
Wahpeton, N. Dak.	36	27	Bonilla, S. Dak.	22	20
Abercrombie, N. Dak.	30	28	Wolsey, S. Dak.	22	19
Enloe, N. Dak.	36	28	Virgil, S. Dak.	22	18
Hickson, N. Dak.	36	29	Alpena, S. Dak.	22	18
Wild Rice, N. Dak.	36	29	Woonsocket, S. Dak.	22	17
Baunders, N. Dak.	36	29	Cuthbert, S. Dak.	22	17
Fargo, N. Dak.	36	29	Letcher, S. Dak.	21	17
Big Stone City, S. Dak.	32	24	Loomis, S. Dak.	21	16
Millbank, S. Dak.	32	23	Trent, S. Dak.	20	15
Corona, S. Dak.	32	24	Henner, S. Dak.	17	14
Willmot, S. Dak.	32	24	Morefield, S. Dak.	18	14
Peever, S. Dak.	34	24	Colton, S. Dak.	20	15
Staseton, S. Dak.	34	25	Sarencac, S. Dak.	21	15
Twin Brooks, S. Dak.	32	22	Burbank, S. Dak.	12½	11
Marvin, S. Dak.	32	22	Vermillion, S. Dak.	15	11

	Present rate.	Future rate.		Present rate.	Future rate.
	Cents.	Cents.		Cents.	Cents.
Meekling, S. Dak.....	16 1/2	12	Reliance, S. Dak.....	26	21
Grayville, S. Dak.....	17 1/2	12	Kennebec, S. Dak.....	27	21
Fullerville, S. Dak.....	17 1/2	12	Presho, S. Dak.....	29	22
Yankton, S. Dak.....	17 1/2	13	Vivian, S. Dak.....	30	20
Tabor, S. Dak.....	18	14	Draper, S. Dak.....	31	22
Avon, S. Dak.....	19	14	Murdo McKenzie, S. Dak.....	33	22
Wagner, S. Dak.....	20	15	Okaton, S. Dak.....	34	22
Lake Andes, S. Dak.....	20 1/2	16	Stamford, S. Dak.....	35	23
Geddes, S. Dak.....	22 1/2	16	Belvidere, S. Dak.....	37	23
Platte, S. Dak.....	22 1/2	17	Kadoka, S. Dak.....	38	24
Utica, S. Dak.....	18	14	Weta, S. Dak.....	38	25
Lesterville, S. Dak.....	18	14	Interior, S. Dak.....	38	25
Tripp, S. Dak.....	18	14	Conata, S. Dak.....	38	26
Parkston, S. Dak.....	18	15	Imlay, S. Dak.....	38	26
Etban, S. Dak.....	18	15	Scenic, S. Dak.....	38	27
Delmont, S. Dak.....	19	15	Creston, S. Dak.....	38	27
Corsica, S. Dak.....	24	16	Farmingdale, S. Dak.....	38	28
Stickney, S. Dak.....	25	16	Caputa, S. Dak.....	38	29
Oacoma, S. Dak.....	26	20	Rapid City, S. Dak.....	38	29

Considerable was said upon the hearing in reference to the minimum weight to be established. Cement plaster loads readily to the marked capacity of the car, and a minimum of 50,000 or 60,000 pounds would not be excessive, having reference to the physical possibility of loading up to that limit. There are, however, certain other conditions which have influenced, and perhaps should influence, the fixing of this minimum.

White plaster retains its qualities for about six months, at the end of which time it begins to deteriorate. Brown plaster grows stronger with age. The dealer at the small towns involved in this complaint can not, with certainty, dispose of a carload of plaster within six months, and dislikes, therefore, to purchase in too large carloads when buying white plaster, but, inasmuch as the brown plaster improves with age, there is no similar objection with that. The plaster manufactured at Gypsum and Fort Dodge is white plaster, while that manufactured by the complainant at Laramie is brown. It is alleged that to fix a high minimum is to throw the business of this section, of necessity, into the hands of the complainant.

The states of Iowa, Minnesota, and South Dakota have established a minimum of 30,000 pounds, and after much discussion and conference this has been agreed upon between carriers, shippers, and dealers as a reasonable minimum and is now in effect. The minimum on lumber is 30,000 pounds, on cattle 22,000 pounds, on brick and wheat 40,000 pounds. We are of the opinion that as applied to the rates above established the minimum upon this commodity ought not to exceed 30,000 pounds.

The complainant alleges that the rates from Council Bluffs discriminate against it, as compared with its competitor at Gypsum, because, as already stated, the rates for corresponding distances are higher from Council Bluffs than from Gypsum, and still further

because to certain localities a lower rate is accorded Gypsum upon condition that the minimum of 60,000 be loaded, while no similar concession is made in favor of Council Bluffs. The first objection of the complainant has been removed by the fixing of lower rates from Council Bluffs than those formerly prevailing; the second objection remains to be considered.

Wherever commercial conditions permit the handling of this commodity in lots of 60,000 pounds carriers seem to have applied that minimum from Gypsum and to have given in connection with it a rate materially lower than the one contemporaneously in effect upon a minimum of 30,000 pounds, and having reference to the cost of transportation this difference in rates is not without justification. It seems clear, however, that to whatever points a minimum of 60,000 pounds is accorded from Gypsum the same minimum with a corresponding reduction in the rate should be given from Council Bluffs. If the rate is reduced from Gypsum, there should be the same percentage of reduction from Council Bluffs.

A cement mill is located upon the line of the Chicago, Milwaukee & St. Paul at Rapid City, S. Dak., and the complainant alleges that rates from this mill to the territory in question discriminate against both Gypsum and Council Bluffs.

It seems that in the making of rates from Rapid City to Missouri River points, where competition from both Gypsum and Laramie must be met, certain intermediate points in this territory are given a lower rate than would otherwise be accorded and a rate somewhat lower in proportion to distance than is made from Gypsum or Council Bluffs; but we fail to find that the apparent discrimination is, under all the circumstances, undue.

The complainant claims reparation in the sum of \$215 on account of eight shipments to various of the points in issue, made during the years 1907 and 1908. The 60,000-pound minimum with the correspondingly low rate was not in effect from Gypsum to any of these points at the time of the shipments of the complainant. We fail to find that the rates charged the complainant at the time of the movements were unreasonable and therefore deny the claim for reparation.

An order will be issued establishing the rates found to be reasonable, but no order will be made as to the higher minimum for the present.

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No. 2463.

PEALE, PEACOCK &amp; KERR ET AL.

v.

CENTRAL RAILROAD COMPANY OF NEW JERSEY.

No. 2587.

GEORGES CREEK COAL &amp; IRON COMPANY

v.

SAME.

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*Submitted February 12, 1910. Decided March 7, 1910.*

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Complainants allege that the defendant's demurrage regulations on coal and coke held for transshipment at tidewater ports are unjust, unreasonable, and discriminatory; first, in favor of shippers of large tonnage; second, in favor of lake ports, southern ports, and New York Harbor points, where no demurrage is charged or where more liberal rules apply; third, in favor of competitors in bituminous coal markets operated under embargo, under demurrage regulations which are not enforced, or where no demurrage regulations obtain. The Commission is asked to enter an order enjoining defendant from collecting demurrage charges that have accrued under existing rules, and to enter an order that demurrage should be computed on the average over a year instead of on the average monthly; *Held:*

1. That no power rests in this Commission to enjoin a carrier from collecting its lawful tariff charges for services rendered; that it would be unreasonable to extend to one year the period on which average demurrage will be computed; that free time should be computed from 7 a. m. of the day succeeding the date on which car arrives at the yards to and including the date on which car is unloaded or upon which vessel registers at the pier as ready to receive that consignee's shipments, provided that consignee has sufficient coal in the yard to load his vessel and has ordered same dumped.
2. That defendant's rules do not unjustly discriminate against complainants or unduly prefer other shippers or places.

*H. W. Henry, William S. Wallace, David L. Krebs, and William A. Glasgow, jr., for Peale, Peacock & Kerr et al.*

*J. J. Alexander for Georges Creek Coal & Iron Company.*

*Jackson E. Reynolds for Central Railroad Company of New Jersey.*

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## REPORT OF THE COMMISSION.

**CLARK, Commissioner:**

The petitions in these cases are essentially similar, certain testimony in the first was stipulated into the second, and, having been briefed and argued together, they will be considered and disposed of in one report.

The attack in both cases is upon defendant's demurrage regulations on coal and coke held for transshipment at the tide-water ports of Elizabeth, Port Johnson, Port Liberty, Communipaw pier, and Communipaw dump, and is that, among other things, they are unjust, unreasonable, and discriminatory.

The regulations provide that after five days, upon the average, computed for the calendar month, demurrage at the rate of \$1 per car per day shall be charged; and that monthly statement shall include only cars released during the month.

Complainants in No. 2463 are engaged in mining, producing, and shipping bituminous coal from central Pennsylvania to and through tide-water ports. Briefly, as between demurrage regulations and a system of embargoes made use of by defendant prior to May 1, 1907, the date on which the demurrage regulations became effective, the petition expresses preference for the embargo; states that demurrage regulations are not properly adapted to accomplish the result of avoiding congestion of terminals and preventing the protracted use of cars and tracks; and charges that the system of embargoes was abandoned by concerted action of defendant, other railroad companies, and certain large shippers of bituminous coal. It is alleged that the rules are unduly discriminatory: (1) In favor of shippers of large tonnage, in that liability to incur demurrage decreases with an increase in the number of cars transshipped, and that a certain volume of traffic would automatically move through the ports within the prescribed period; (2) in favor of lake ports where no demurrage regulations are in effect, and of southern ports and New York Harbor points where the free time is greater and rules more liberal; and (3) in favor of competitors in the bituminous-coal markets of the country shipping over railroads operating under embargo, under demurrage regulations which are not enforced, or having no demurrage regulations. It is also alleged that the rules may become discriminatory by defendant's favoring shippers of large tonnage by itself purchasing the coal for fuel purposes immediately previous to the time when demurrage would begin to accrue, or by holding shipments in transit until such time as the shipper is in a position to remove the tonnage at tide water within the free-time allowance. Reparation in the sum of \$1,405 is asked.

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While the petition, inferentially at least, prays the substitution or reinstatement of the embargo system for the current demurrage regulations, the position of complainants in this respect was apparently abandoned, as they, through their witness, submitted a suggested demurrage regulation, the principal features of which are that the free time shall be increased to seven days, computed on the average yearly, bills therefor to be rendered and paid monthly, and, in addition, straight demurrage of \$2 per car per day against consignees who signify their willingness to pay for detention beyond fifteen days. It is unnecessary to here discuss the necessity for demurrage regulations further than to refer to *In the matter of car shortage*, 12 I. C. C. Rep., 561, and *Wilson Produce Co. v. P. R. R. Co.*, 14 I. C. C. Rep., 170.

Complainant in No. 2587 mines and sells a semibituminous coal produced at its mines at Lonaconing, Md. It shipped between December, 1906, and July, 1907, many cars of coal via the line of the defendant. In the spring of 1907 it had contracts with certain firms located at New Haven and Boston for 120,000 tons of coal, and in June, 1907, 237 cars containing some of the coal to fill these contracts were held at Elizabethport in excess of the free time allowed, and bill for demurrage in the sum of \$783 was rendered against complainant. This it refused and still refuses to pay, and it prays that collection of same be enjoined by the Commission. None of the cars were owned by defendant, and this fact is the basis of an allegation of unjust discrimination against the complainant in favor of shippers of coal which was transported by defendant in cars belonging to it. Between June 4 and 14, 1907, defendant embargoed complainant's shipments to Elizabethport. On some of this coal demurrage later accrued, and it is submitted by complainant that defendant can not lawfully exercise two concurrent remedies on the same subject-matter. Obviously the embargo was to prevent more coal coming to terminals already congested. The demurrage accrued after arrival of cars, because of scarcity of vessels in which to load the coal. It does not appear that the embargo caused the demurrage. On the contrary, it clearly appears that the main and direct cause for the accrual of this demurrage was the fact that complainant's customer refused to accept or receive the coal. Complainant does not now ship, and since July, 1907, has not shipped, via the line of defendant.

Reference is made to the demurrage rules of the Baltimore & Ohio Railroad Company, applicable at Locust Point (Baltimore), and Curtis Bay, Md., and those of the Philadelphia & Reading Railroad Company in effect at Port Richmond, Pa., and Port Reading, N. J., as being more reasonable than those of defendant, in that a longer period of free time is allowed, and particularly that the total detention

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is computed by deducting the date of the arrival from the date the car is unloaded, excluding Sundays and legal holidays, and the date of arrival of vessel is considered to be the date it is registered at the pier office for the cargo of which the coal or coke dumped is a part, whereas defendant's rule is that vessels reporting shall be loaded in the order of reporting, provided when the vessel reports the shipper has a sufficient tonnage in the yard to load the vessel and has ordered the coal dumped.

The following statement shows, in days, the free time allowed at tide-water points by defendant and other named carriers on coal for reshipment by water:

*Days of free time allowed at tide-water points.*

	Average.	Straight.
Baltimore & Ohio:		
Locust Point, Baltimore, Md. }	5	12
Curtis Bay, Md. }		
Jackson street, Philadelphia, Pa. }	7	15
Staten Island Rapid Transit:		
St. George, S. I. }	7	15
Philadelphia & Reading:		
Delaware River pier. }		
Wilmington, Del. }		
Port Richmond, Pa. }	7	15
Philadelphia, Pa. }		
Port Reading, N. J. }		
Pennsylvania R. R.:		
South Amboy, N. J. }		
Harsimus Cove (J. C.), N. J. }	5	12
Greenwich piers, Philadelphia, Pa. }		
Canton piers, Baltimore, Md. }		
Western Maryland:		
Port Covington, Md. }	5	12
Lehigh Valley R. R.:		
Perth Amboy, N. J. }	5	
Central Railroad of New Jersey:		
Elizabeth, N. J. }		
Port Johnson, N. J. }		
Port Liberty, N. J. }	5	None.
Communipaw pier, N. J. }		
Communipaw dump }		
Chesapeake & Ohio:		
Newport News, Va. }	7	None.
Norfolk & Western:		
Norfolk, Va. }		
Lambert Point, Va. }	7	None.

The Delaware, Lackawanna & Western Railroad provides at Hoboken Terminal, N. J., that cars containing anthracite coal from Pennsylvania points for transshipment are exempt from demurrage. It is testified and not contradicted that the Virginian Railway has no demurrage regulations in effect at Sewall's Point, Va., and that movement of coal for transshipment via Great Lakes, and many trains containing anthracite coal, are handled by embargo, that is, stopping shipments to a particular point or of a particular shipper.

For a long time prior to the establishment of defendant's demurrage regulations in 1907, with the exception of a period in 1906 when four days' free time was allowed and discontinued on protests from

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shippers, defendant made use of a system of embargoes; but its application was not satisfactory and it is testified by defendant that it can not now be physically enforced.

Investigation of the detention of cars at tide-water ports was commenced in 1902 and a systematic correspondence was had with many of the patrons of defendant, other than complainants, on the subject of proposed demurrage regulations similar to those now in controversy. The investigation and tests demonstrated that the majority of regular or frequent shippers were able to discharge coal at tide-water points within a period of less than five days per car, computed by the month (the month of December, 1903, showing an average of 4.4 days), but that irregular or speculative dealers and shippers of inferior coal detained the cars for longer periods. Many shippers expressed approval of the proposed regulations. The endeavor of defendant to secure cooperative action previous to promulgation of the rules is the basis for allegation of concert of action in their establishment.

So little testimony having been offered in No. 2587, the following statement, except where otherwise specified, refers to No. 2463:

Complainants' tide-water bituminous coal tonnage per year is approximately 2,500,000 tons in addition to its anthracite coal business, as to the amount of which no testimony was given.

The following statement shows, in gross tons, the coal tonnage transhipped by complainants over defendant's New York Harbor piers:

	1908.	1909.	Total.
	<i>Tons.</i>	<i>Tons.</i>	<i>Tons.</i>
Port Liberty, bituminous.....	60,968	47,919	108,887
Communipaw pier, bituminous.....	22,361	547	22,908
Elizabethport, anthracite.....	17,377	4,764	22,141

Ninety-five per centum of this coal was sold or consumed in the immediate neighborhood of New York.

On the total tonnage of 153,921 tons, demurrage accrued from May 1, 1907, to July 31, 1909, as follows:

1907:

June.....	\$310
July.....	357
August.....	116
September.....	80
December.....	11

1908:

February.....	244
April.....	84
May.....	48
July.....	69
November.....	16

1909:

February.....	\$240
July.....	66

From which it will be seen that out of twenty-seven months complainants' cars accrued demurrage in 11.

None of complainants' mines are located on defendant's line, but are on the New York Central & Hudson River; Pennsylvania; Beach Creek; and Reynoldsville & Falls Creek railroads. The rate under which the coal moves is f. o. b. vessels, and covers delivery on the pier and dumping into the hold of the vessel. It is not an inland proportion of a through rate.

Complainants consign from themselves at the mines to themselves at the piers, the destinations being indicated as the piers. However, as the coal is for transshipment beyond the piers, either as fuel for vessels docking at New York Harbor points, for consumption in the immediate neighborhood of New York, or for transshipment to points beyond New York, complainants insist that when it reaches defendant's piers it is not at destination and therefore, following the practice of some carriers on reconsigned shipments, no demurrage should be assessed. We have already seen that 95 per centum of complainants' coal transshipped over defendant's piers is either for vessel bunker use or is consumed at New York.

It takes about four days to transport bituminous coal and less than sixteen hours to transport anthracite coal from complainants' mines to defendant's piers. If complainants receive an order for a thousand tons of coal, they could mine and have it delivered at the pier in a week and defendant could easily unload it in a day.

The assessed value of the property of defendant at tide ports devoted to coal business is \$1,300,000.

Port Liberty, Communipaw pier, and Communipaw dump are located at defendant's Jersey City terminals, and are nearer to the center of distribution than any other piers in the harbor. Port Johnson is located at Bayonne and Elizabethport pier at Elizabeth. At the latter there are three piers and the storage tracks are within from 600 to 1,000 feet of the pier structures. The facilities there are ample to handle daily 300 or 400 cars and dump 8,000 to 10,000 tons of coal, but the business offering is not that great. Under normal conditions, after order is received to place a car on the pier it requires but a short time to switch it from the storage yards, and even if the yards or piers were congested not more than two hours would be required. Inasmuch, however, as the pier is not worked to more than 50 per cent of its capacity, the normal condition is actually the general situation. It is stated that defendant could materially increase

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the volume of coal business which is done at its pier if the coal were regularly and promptly handled.

Defendant's witness testified that the demurrage regulations operated equally on large and small shippers, and the statement is borne out by exhibits, one of which shows that of 52 consignees incurring demurrage amounting to \$67,333 at tide water during the period May, 1907, to July, 1909, 26 were assessed less than \$100; 8 were assessed more than \$100 and less than \$300; 4 were assessed more than \$300 and less than \$500; 4 were assessed more than \$500 and less than \$1,000; 6 were assessed more than \$1,000 and less than \$1,500; a total of \$52,545, of which \$38,595 was paid by one shipper; that is, 48 of the consignees accrued less than 22 per centum and 4 consignees more than 78 per centum of the demurrage. The largest shipper accrued by far the greatest demurrage.

As bearing on the actual performance of complainants, defendant submitted an exhibit showing the cars handled, total and average detention per car for account of complainants at Port Liberty, Communipaw pier, and Elizabethport during the period May 1, 1907, to July 31, 1909, totaling which, the following appears:

Total cars handled, 4,297. Total days detained, 20,204. Total Sundays and holidays, 3,468. Free time in days, at five days per car, 21,485. Total days of free time, 24,953. Average detention, Sundays and holidays included, four days, sixteen hours. Average detention, Sundays and holidays excluded, three days, twenty-three hours.

It is admitted that defendant is in no way responsible for delays of vessels in coming to the piers to load coal for bunker purposes, nor in the chartering of vessels and bringing them to the piers for loading.

Reference was made in the testimony to the free time, rates, and service performed by line and tide-water shippers. The rate to Port Liberty on transshipped coal is \$1.60 per ton, the free time is five days on the average plan, and the unloading is performed by the carrier. The line or local shipper pays a rate of \$1.85 per ton, has forty-eight hours' free time or twenty-four hours on the average plan and performs the unloading. The tide-water shipper has no storage facilities at tide; the line shipper has his own yards and facilities. The tide-water shipper in an endeavor to run his mines as regularly as possible and to have the coal transported therefrom at regular intervals depends on the storage facilities of the carriers, whereas the line shipper gets a purely transportation service.

The position of complainants regarding their demand that the average detention of cars shall be computed on a yearly basis is that overtime occurring in one month may be offset by an average less than the free time allowed in other months; that, for instance,

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so-called "debits" the last day of the month should not result in demurrage to the shipper when possibly on the first day of the next month expeditious handling gives him a so-called credit sufficient to eliminate the charge; that the generally accepted period for the sale of coal and for the rate-scale agreements with miners, as well as the conditions of transportation, is twelve months—that is, in mining and selling coal, the business is done on yearly contracts; that the coal market is active from October 1 to March 15 and dull the remainder of the year. In an active market the cars can be promptly unloaded, but business conditions make that impracticable in the dull season. It is also suggested that the lesser volume of traffic in the dull season does not require as prompt return of equipment to the transportation service as does the large tonnage moving during an active market and that the necessities of the carriers as well as the shippers would be more nearly equalized by an average computed on a yearly basis. But defendant considers that the demand for computation of the average on a period longer than a month is based in a misconception of the intent of the rule. While popularly known as the "debit and credit rule," in fact it is not intended to give credits, but to average the total detention of all cars to a consignee for a calendar month; and the primary object of demurrage regulations is to release cars after a certain period, not to reward a shipper for releasing them in less than that period. Defendant contends that some period of computation must necessarily be adopted, and a month is the time indorsed by commercial practice. It is the natural calendar division which conforms to monthly statement of debits and credits in car accounting and is used generally in financial transactions. The fundamental objection of defendant to the lengthening of the period on which the computation shall be based is that under a yearly average no demurrage would accrue; that is, in one season a number of cars might be held for a great length of time, congesting terminals and storage yards, and the debits against such cars could be offset by the prompt unloading of cars in another season.

The record of complainants' demurrage for the period from May 1, 1907, to July 31, 1909, does not bear out the suggestion that the demurrage rules are always of more importance to the shippers during the dull or summer season. In 1907 the greater amount of demurrage is seen to have accrued in June, July, and August. In 1908 and in 1909, however, the heaviest demurrage charges accrued in February.

Before coming to a consideration of the essential questions of these cases, whether or not the regulations are unreasonable or unduly discriminatory, it is necessary to discuss certain points raised by complainants or involved in the controversy.

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It does not appear necessary to do more than refer to the decision of the Commission in *Wilson Produce Co. v. P. R. R. Co.*, 14 I. C. C. Rep., 170, in which it was held that the duty of regulating terminal charges, when related to traffic between states, has been lodged with the Commission, and cases therein cited; to *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*, 204 U. S., 426; *Interstate Commerce Commission v. C. & A. R. R. Co.*, 215 U. S., 479; *Interstate Commerce Commission v. I. C. R. R. Co.*, 215 U. S., 452; *Baltimore & Ohio R. R. Co. v. United States*, 215 U. S., 481, to show that the act confers upon the Commission jurisdiction to determine the reasonableness or discriminatory nature of the regulations herein involved.

The requirements of the law with respect to the publication, posting, and filing of "all terminal charges, storage charges, icing charges, and all other charges which the Commission may require" removes from the carrier and from the shipper the right which existed under the common law to contract in reference to demurrage charges on any basis other than that specifically set forth in the carrier's published tariffs. If, therefore, complainant in No. 2587 did not have personal notice of the promulgation of defendant's demurrage regulations, that fact neither vitiates defendant's right nor lessens its duty to impose demurrage charges incurred under the rules contained in its lawful tariff. It is no answer to this statement to say that other railroad companies found it necessary in the operation of the average plan of demurrage to secure executed agreements of shippers that demurrage charges assessed against them will be promptly paid.

Neither does the fact that the complainant in No. 2587 was not, with respect to the coal transported in the cars on which demurrage accrued at Elizabethport, engaged in speculative dealing invalidate the demurrage regulations. The fundamental principle of the act is that all charges for transportation and services in connection therewith shall be applicable alike and in the same measure to all shippers, and the question is whether or not, in their application, the demurrage regulations operate reasonably and without undue prejudice or disadvantage.

The proceeding in No. 2587, as has been previously seen, was instituted to obtain from the Commission an order enjoining the collection of the demurrage charges *pendente lite*. That power does not rest in the Commission. The law lays upon the carrier the obligation to collect and upon the shipper to pay the lawful tariff charges. In addition, the Commission has held in *Males Co. v. L. & H. R. Ry. Co.*, 17 I. C. C. Rep., 280, that it would not be its policy to award reparation where lawful charges have not been paid.



The facts that none of the cars on which this demurrage accrued was actually owned by defendant, and that its cars were furnished to other shippers, can not, by any process of reasoning, constitute an unjust discrimination against complainant in No. 2587, because the question of ownership of the cars did not and could not operate to complainant's disadvantage. Cars, no matter what initials, names, or numbers were stenciled upon them, were furnished. We have no allegation that they did not adequately meet complainant's needs as well as would defendant's own cars. If complainant received its quota or distributive proportion of available cars the fact that they were not defendant's own cars subjected complainant to no undue prejudice. They were to all intents and purposes defendant's cars while on its tracks and used in its service. It makes no difference in this connection whether the cars are owned, leased, or used under a mileage or per diem arrangement.

Complainant in No. 2463, having apparently abandoned the contention that a system of embargo is better adapted to accomplish the end sought to be secured by demurrage regulations, it appears unnecessary to give extended discussion to that phase of the cases. It is not within the power of this Commission to order a carrier to interdict a particular shipper from engaging in interstate transportation. The only ground upon which the Commission could give consideration to the question of embargoes would be on an allegation that an embargo or a series of embargoes resulted in undue discrimination. An embargo is a war measure or extraordinary remedy. Primarily, it is not intended as an incentive to promptly release equipment but to prevent further movement until such time as measures can be taken to remove accumulation of cars.

The absence of demurrage regulations, the laxity in observance or the nonenforcement of such as were in effect previous to the amendment of the act, and the use of embargoes, operated to include within the rate for transportation the detention of cars. The abandonment of embargoes and the enforcement of demurrage regulations and the collection of charges thereunder, when for years his business has been free from such tax, impresses the shipper as a new and additional burden on transportation, and, in the circumstances, a peculiar hardship. In many instances, to foster business, build up communities, meet competition, conciliate shippers, and increase tonnage, carriers grant privileges and make concessions which, however necessary, politic, or wise when granted, are difficult to cancel without protest on the part of the shippers. Whatever might have been the practice in the past, no matter how valuable a privilege may have been to a shipper, its reasonableness, justness, and legality for the future is not alone determinable by the custom which has prevailed, but by the

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provisions of the act and the facts before us. The primary duty of a carrier is to afford carriage or transportation. As a part of such transportation, it is its duty to grant the shipper, after the actual movement has ceased, sufficient time to remove the lading from the car. But in respect to tide-water coal, the rate includes dumping the coal into the hold of the vessel, and the shipper does not perform the unloading. It is not the duty of a carrier to furnish storage beyond the reasonable time necessary to unload, and it is not within the power conferred upon the Commission by the act where a carrier has not held itself out as granting storage to order it furnished, but if it is furnished and charged for, storage becomes an incident in connection with transportation, and the legality of the rule becomes a proper matter for consideration by the Commission.

Prompt release of cars increases the supply available for transportation. It is therefore not alone to the interest of the carrier, but to that of the shipper, that cars be released as promptly as the exigencies of the business in which they are engaged will permit.

It is undoubtedly the right of defendant to establish and maintain demurrage regulations under which a reasonable charge will accrue for detention of cars beyond a reasonable period. We may even go further: An obligation rests upon defendant to so conduct its business that all of its patrons shall be accorded, without discrimination to any, the fullest and freest use of its equipment and facilities, and if coercive measures become necessary to accomplish that end they will be viewed with favor so long as they are reasonable and subject none to undue prejudice or disadvantage.

From the standpoint of reasonableness *per se*, on what basis can the free time now allowed be found insufficient? Admittedly, there are delays in transportation and sometimes cars are accumulated at the piers on account of such delays in excess of complainant's ability to give defendant orders to unload within the free time, but that fact was given consideration by defendant in granting five days, computed on the average. It is matter of common knowledge that water craft are at the mercy of conditions which make it impossible at all times to predict the precise date of docking and clearing, but concededly defendant is not responsible therefor, although the irregularities resulting therefrom are among the exigencies of the business taken into account when the time was fixed. The fact that defendant's facilities at tide water are capable of handling 100 per centum increase in the coal traffic now handled, while indicative that it *might* somewhat lengthen the free time without overtaxing its yardage, does not require that defendant *must* lengthen the time if the present time is reasonable.

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In the framing of demurrage regulations the object sought to be secured is the prompt release of cars. It is not intended that they shall be so liberal as to defeat the end sought to be attained, but to operate to stimulate a shipper to aid the carrier to serve all shippers. We can not find that the free time accorded under defendant's rules is unreasonably short except in the particulars hereinafter specified.

Should the computation of the average time be extended over a year instead of being computed monthly? We have referred to the reasons for and against this demand. The report of the Committee on Uniform Demurrage Rules to the Twenty-first Annual Convention of the National Association of Railway Commissioners, which was adopted by that convention, and which has been approved by this Commission, under Rule 9 covering the average agreement, contains an interesting statement of the reasons which brought about the establishment of this principle. It was there stated that it is not a discrimination in favor of the large shipper as against the small shipper, rather representing an effort to serve the legitimate needs of all.

We consider that an extension to a year of the period on which the computation shall be based would be an unjust and unnecessary nullification of defendant's demurrage regulations.

Defendant's rules provide:

In computing time of detention, first ascertain the total number of days between the date of arrival of each car, and date released, from which total deduct the number of Sundays and holidays intervening. From the total of figures obtained in this manner for all cars handled for a consignee during the month shall be deducted the product of the number of such cars multiplied by 5, the remainder, if any, being the number of days per car for which demurrage will be charged.

It is contended by complainants that in assessing demurrage the date of arrival and date of release are counted, and that the absence of provision for *cesser* of demurrage when vessel reports for loading at defendant's piers is unreasonable.

This rule is not phrased as well, as definitely, or as clearly as it might be written. There is room for the contention that literally construed the word "between" excludes the day of arrival and the day of release. We think that if but five days are allowed, including date of arrival and date of release, the rule is unreasonable. It is reasonable to include the date of release, but unreasonable to include the date of arrival. The arrival may be so late as to give consignee no use of that day; in fact, so late that he could not know or learn of the arrival. In *Murphy Bros. v. N. Y. C. & H. R. R. R. Co.*, 17 I. C. C. Rep., 457, it was held that free time should be computed from 7 a. m. on the day succeeding the *sending* of notice. The contiguity of defendant's yards to piers makes it reasonable to consider

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a car as having arrived at 7 a. m. on the day succeeding the date on which it arrives at the yards, and the date released the date on which car is unloaded or on which a vessel registers at the pier as ready to load that consignee's shipments, it being understood, of course, that consignee has sufficient coal in the yard to load the vessel and has ordered same dumped.

The only remaining point to be considered is whether or not defendant's demurrage regulations unduly discriminate against complainants. These rules apply alike at all of defendant's ports, and it follows that the rules being uniform there can be no basis for the charge that defendant is discriminating against complainants. But other carriers have no demurrage regulations, some use the embargo system, and other ports are granted a longer time by other carriers. Do these facts indicate that complainant is subjected to unjust discrimination? It is in evidence that defendant's Jersey Terminal piers are considered to be the most accessible and centrally located of any in New York Harbor; that 95 per cent of complainant's shipments are marketed in that immediate vicinity; and that the competition with Norfolk, Lambert Point, Newport News, and Sewall's Point is negligible. St. George is on Staten Island 4 miles from the lower end of Manhattan. Port Reading is at the village of that name 22 miles from New York. Their distance from the center of distribution in Manhattan is recognized by a rate on coal from the mines 5 cents lower per ton than to defendant's Jersey City piers. We are unable to find that defendant's rules work unjust discrimination against these complainants or that complainants are entitled to reparation.

An order in accordance with the foregoing report will be entered.  
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No. 1987.  
LYNAH & READ ET AL.  
v.  
BALTIMORE & OHIO RAILROAD COMPANY ET AL.

*Submitted February 12, 1910. Decided March 7, 1910.*

Defendants' demurrage rules applicable to coal for transshipment by water at Locust Point (Baltimore) and Curtis Bay, Md., are alleged to be unreasonable *per se*, and unjustly discriminatory as compared with defendants' rules applicable to the same traffic at Philadelphia, Pa., and St. George, Staten Island, N. Y.; *Held*:

1. That it would not be reasonable to require defendants to compute demurrage on an average of the time used by a consignee at all of defendants' different ports, or to compute demurrage on an average for the year instead of for the month, or to include in the free time allowed the delays caused by consignee's failure to have vessel ready to receive the coal; but that unreasonable delays in transporting the coal to the ports by railroad should not cause demurrage against consignees.
2. That the free time allowed in defendants' rules is not unreasonable *per se*, but that it is unjustly discriminatory and unduly prejudicial against complainants for defendant B. & O. to fail to give at Locust Point and Curtis Bay as liberal allowance of free time as it contemporaneously gives at Philadelphia.
3. That it is not unreasonable for defendants, in computing free time and demurrage, to count the change of ownership or reconsignment of the coal the same as unloading the car, if the original consignee is operating under the average plan; but that it is unreasonable to curtail the free time to which the car is entitled, if the car is subject to straight demurrage time.
4. That "arrival of car" from which free time is computed should be 7 a. m. of the day after the date on which the car arrives, or after the day on which written notice of arrival of car is sent.

*William A. Glasgow, jr., and Chester N. Farr, jr., for complainants.  
William Ainsworth Parker for defendants.*

REPORT OF THE COMMISSION.

**CLARK, Commissioner:**

Demurrage regulations of defendants are assailed as unreasonable and discriminatory both actually and in their interpretation. Complainants demand reparation and that:

- (1) The free time allowed at Locust Point and at Curtis Bay, Md., on tide-water coal shall be increased from five days, computed on the

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average monthly, and twelve days straight time, to seven and fifteen days, respectively, as now applied by defendant Baltimore & Ohio Railroad at Jackson street, Philadelphia, Pa., and by defendant Staten Island Rapid Transit Railway at St. George, Staten Island, N. Y.

(2) That the average detention at all of defendants' tide-water ports shall be consolidated.

(3) That demurrage shall be computed on the average plan yearly instead of monthly.

(4) That the date from which the time of detention shall begin shall be either when the car is actually at the pier for dumping into a vessel or the time when the notice is received by consignee of the arrival of the car at the yards ready for delivery at the pier.

(5) That free time shall follow a car when consignee or destination of same is changed.

(6) That delays to vessels in reaching piers and delays in transit shall be considered in the allowance of free time.

The regulations which are attacked are as follows:

On and after November 1, 1908, demurrage will be charged under the following rules at Locust Point (Baltimore), and Curtis Bay, Md., for detention to cars containing anthracite coal, bituminous coal, and coke held for transshipment:

#### CHARGE.

Rule 1. A charge of \$1 per car per day shall be made after the car has been detained twelve (12) days; detention to be computed as per Rule 2 (a), (b), and (c).

Persons who execute the agreement as shown below will be given the privilege of settling demurrage on an average basis of five (5) days per car, computed as per Rule 2.

#### COMPUTING DETENTION.

Rule 2. The date of arrival of the car shall be subtracted from the date unloaded; the difference between these dates will constitute the total detention to the car.

From the total of the day's detention to all cars thus obtained:

- (a) Deduct the number of Sundays and legal holidays, but not half holidays, intervening between the date of arrival of car and the date unloaded.
- (b) Deduct the number of days on hand intervening between the date of arrival of the vessel and the date car is unloaded, excluding the Sundays and legal holidays allowed for under paragraph (a), if any.
- (c) Also deduct five days' free-time allowance for each car.
- (d) After making the deductions provided above, the remainder, if any, will be the number of days for which the consignee will be charged.
- (e) The date of vessel arrival shall be the date a vessel is registered at the pier office for the cargo of which the coal or coke dumped is a part.

## BILLS.

Rule 3. Bills for the number of days to be charged for, computed as above at the rate of \$1 per day, will be settled monthly and will include only the cars unloaded during that month.

## CHANGE OF OWNERSHIP.

Rule 4. Tide-water coal or coke may change ownership after reaching Locust Point or Curtis Bay coal piers only upon the written order of the original consignee or his accredited representative.

All orders for the delivery of tide-water coal or coke to a new consignee or purchaser shall specify the date on which the order is to become effective.

The date on which an order for the delivery of coal or coke to the new consignee or purchaser becomes effective shall be considered the date of release of the car for the account of the original consignee, and time shall be charged to him accordingly.

No free-time allowance will be made to the new consignee or purchaser for cars of coal or coke which changes ownership, but detention shall be reckoned and charged against the new consignee or purchaser from the date the order for the delivery to him became effective. Said detention shall be subject to the other deductions provided in Rule 2.

## RECONSIGNMENTS.

Rule 5. When a car of tide-water coal or coke is reconsigned from Locust Point or Curtis Bay coal piers to another destination, the date the car is ordered reconsigned will be considered the date unloaded, and the detention or demurrage which had accrued will be taken into the account of and charged against the original consignee.

Previous to the establishment of these regulations defendant Baltimore & Ohio Railroad had attempted to enforce demurrage rules in 1902 and 1904, but withdrew them on account of protests from shippers, and competition. The rules of the Staten Island Rapid Transit are identical with those of the Baltimore & Ohio except that the free time allowed is seven and fifteen days. It is admitted that the Baltimore & Ohio uses the terminals of the Staten Island Rapid Transit Railway for delivery of bituminous coal and coke at St. George and that it owns the stock of the Staten Island Rapid Transit Railway.

Tariffs of the Philadelphia & Reading Railway applicable at Wilmington, Del., Philadelphia, Pa., and Port Reading, N. J., provide for seven and fifteen days; of the Pennsylvania Railroad at South Amboy, N. J., Harsimus Cove (Jersey City), N. J., Philadelphia, Pa., and Baltimore, Md., five and twelve days; of the Central Railroad of New Jersey, five days' average, no straight time; of the Norfolk & Western Railway, at Norfolk and Lambert Point, Va., seven days' average, no straight time; of the Chesapeake & Ohio Railway at Newport News, seven days' average, no straight time.

Defendants seek to justify the longer free time at Philadelphia and St. George by alleging competition of the Philadelphia & Read-

ing at New York and Philadelphia, and that coal originating on the Baltimore & Ohio may be dumped over the Reading piers if the shipper so elects, and, when so dumped, is diverted from the Baltimore & Ohio at Martinsburg or Cherry Run, W. Va., with a loss of revenue to the Baltimore & Ohio.

Complainants contend that the rules work more severely in dull and normal times, but that where the demand for coal is active cars can be unloaded with regularity; in other words, that the coal business is conducted yearly, that the active market for coal is from October 1 to March 15, the remainder of the year being dull; that in the spring and summer when there are plenty of cars and the market is well supplied with coal it is more difficult to dispose of the coal, and the delays incident thereto at that time should be offset by the greater regularity with which cars are released during the period of an active market. Along the same line it was alleged that the computation by the month operates disadvantageously to the shipper in that, for instance, a so-called credit in one month is canceled at the end of the month, although possibly during the first days of the succeeding month prompt movement would enable the shipper to release cars in less than the average free time. Illustrations were given of delays in transit, causing shipments to arrive at the port too late for the vessel for which intended, and of delays to vessels, which rendered it difficult for the shipper to anticipate with certainty the time at which delivery to the vessel could be made. These difficulties, the longer free time allowed by the defendants at Philadelphia and St. George and by other carriers at Philadelphia, New York, and southern ports, the competition of coal transshipped through Maryland ports with that moving through tide-water ports generally, are the bases for the allegation and belief of complainants that the time allowed by defendant Baltimore & Ohio Railroad at its Maryland ports is unreasonably short, and should be averaged on a yearly instead of a monthly basis.

On the ground that demurrage is a penalty for delay to equipment and that what the carrier seeks is release of equipment, complainants claim that the release of a car at one port should operate to prevent the shippers' being penalized for delaying a car at some other port of the same carrier. No carrier has ever had such a rule and defendants' witnesses testified that it would neutralize the remedy; that is, the end sought to be attained by demurrage regulations is not alone the release of equipment, but of tracks and terminals. If, therefore, prompt unloading by a shipper at one port were to be averaged with his performance at some other port it would be impossible for the carrier to prevent congestion and accumulation of cars at terminals.

Postal notices are mailed to shippers giving the dates on which cars arrive at the yards of defendants. The piers at Locust Point are  
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from a mile to a mile and a half from the yards. At Curtis Bay the whole of the branch which is from 5 to 7 miles long is considered the yard. At St. George the yard is at Cranford, 10 or 12 miles from the pier. It is impossible for the shipper, except he have notice from the carrier, to know that a car has arrived. Defendants suggest that the information may be secured by telephone, but under the circumstances here considered and the conditions above described we can not find that complainants must depend upon that means or bear the expense incident thereto. The date of arrival of the car in the yards is taken as the date from which free time shall commence. If notice that a car has arrived is received after the close of the business day it is impossible for the consignee to take any steps to secure the disposition of the car. This practice it is alleged reduces the free time by from one to two days.

Previous to the establishment of the present rules an average free time of four days was allowed. It is testified that this was found to be sufficient for certain shippers, but not long enough for others, and therefore five days was granted.

The average detention per month at defendants' tide-water ports, exclusive of Sundays, holidays, and railroad delays was, for the period April 1, 1907, to October 31, 1909, as follows:

	Days.
Locust Point.....	3.01
Curtis Bay.....	3.30
Jackson street.....	3.63
St. George.....	4.47

The lowest average net detention at Locust Point was 1.43 days in December, 1907; the highest, 5.15 days in May, 1909. The other ports are, respectively, in days, as follows: Curtis Bay, 0.92, in October, 1907; 6.42, in February, 1908. Jackson street, 1.52, in October, 1907; 6.55, in June, 1909. St. George, 2.43, in September, 1909; 7.17, in February, 1908. During the above-mentioned period an average of five days was exceeded in three months at Locust Point, in one month at Curtis Bay, in three months at Jackson street, and in eight months at St. George.

The average number of firms incurring and avoiding demurrage each month at each of the tide-water ports of the defendants from April 1, 1907, to October 31, 1909, is as follows:

	Avoiding demurrage.	Incurring demurrage.
Locust Point .....	20.6	8
Curtis Bay.....	11.9	2.7
Jackson street.....	9.3	1.3
St. George.....	17.8	8.7

The total number of cars of coal shipped to Baltimore for beyond the piers since April 1, 1907, was 161,062, on which \$12,361 demurrage accrued.

It is asserted that three firms handling coal at these tide-water ports have their own boats. Defendants were requested to furnish a comparative statement for the period April, 1907, to November, 1909, both inclusive, showing cars handled by such firms and by all other consignees. From this it is seen that with the exception of the months of May, 1907, and March, 1908, the three firms incurred no demurrage at Locust Point; and with the exception of February, August, and November, 1908, and May and November, 1909, none at Curtis Bay, whereas the other consignees incurred demurrage in all months with the exception of July, August, and December, 1907, and July, 1909, at Locust Point, and November, 1907, and May and July, 1909, at Curtis Bay.

The following extracts from the statement show the months in which an average detention, which includes Sundays, legal holidays, and railroad delays, of five days was exceeded by consignees other than the three firms which have their own boats.

	Locust Point.	Curtis Bay.		Locust Point.	Curtis Bay.
	<i>Days.</i>	<i>Days.</i>		<i>Days.</i>	<i>Days.</i>
<b>1907.</b>			<b>1908.</b>		
April .....		5.50	September .....		7.32
May .....		7.25	October .....		5.31
June .....		6.28	November .....		7.65
July .....		6.58			
August .....		5.37	<b>1909.</b>		
			January .....	6.64	5.02
<b>1908.</b>			February .....	6.00	5.47
January .....		5.57	March .....	5.99	
February .....	7.41	10.12	April .....	6.98	5.15
March .....		6.23	May .....	6.10	
April .....		5.53	June .....	6.41	
May .....		5.85	July .....		7.17
June .....		7.11	October .....		6.27
July .....		5.59	November .....		11.21
August .....		6.33			

The following table shows the number of cars shipped by the three companies, which have their own boats, from April, 1907, to November, 1909, both inclusive, and the demurrage assessed against them, together with the average demurrage per car, the number of cars shipped by other consignees, the demurrage assessed, and the average demurrage per car:

	Cars.	Demurrage.	Average demurrage per car.
<b>Locust Point:</b>			
Three companies .....	18,230	\$119	\$0.006
Other consignees .....	32,323	8,377	.10
<b>Curtis Bay:</b>			
Three companies .....	72,287	740	.01
Other consignees .....	43,501	8,345	.19
<b>St. George:</b>			
Three companies .....	36,100	588	.02
Other consignees .....	65,832	45,654	.66

Apparently an average of about 25 consignees other than the three firms used the piers. From the above it will be seen that during the period covered by the statement the three firms received 100,517 cars, while during the same period the 25 other consignees received 75,824 cars. The complainants contend that the foregoing indicates that the demurrage rules operate more disadvantageously against the small shipper than against large shippers, and substantiates their contention that the free time should be increased. It is argued that if the free-time allowance was based on actual performance it is but fair to separate from the general mass the largest three shippers over the ports in order to show what is the general average monthly performance by the great majority of shippers. In other words, if the shipper is penalized by the rules for an average detention exceeding five days, computed monthly, the basis on which that figure was reached should not be an average determined by the average performance of all shippers during a period of more than two-years.

Of the six points presented to the Commission by this case, two have already been determined in *Peale, Peacock & Kerr v. C. R. R. of N. J.*, ante, p. 25. The contentions that demurrage should be computed on the average plan yearly instead of monthly, and that the date upon which the time of detention shall begin should be when the car is actually at the pier, or when the notice is received, are governed by that decision, except that that finding is not to be construed as authorizing abolishment or curtailment of the practice of these defendants to send written notices of the arrival of cars.

We can not view with favor the contention of complainants that instead of the demurrage accruals at each port being stated and paid for separately, the full detention at all ports of defendants shall be consolidated, for the reason that notwithstanding the fact that one of the primary reasons for demurrage is to release equipment and again place it in the transportation service, an equally important end sought to be obtained by such regulations is the use of defendant's tracks and terminals for all of its patrons. The circumstances and conditions surrounding transportation at one port may be, and necessarily are, essentially dissimilar from those which obtain at another, and the promptness with which a shipper releases equipment at one yard, where the facilities are ample, can not reasonably be taken as conclusive in determining what would constitute promptness at another port. This business is mainly cargo coal. It is therefore necessary to concentrate a cargo at one port. It would not be reasonable to hold that because a shipper accumulates a cargo at one port and promptly discharges it he may hold cars and tracks indefinitely at another port and offset the time used at one port against that used at the other port.

The principal witness of defendant Baltimore & Ohio Railroad testifying on the question of whether or not the free time should follow the car when change of ownership of coal occurs, stated that he was in favor of the more liberal rule, but that in practice it is found that under the rule for canceling the remaining free time, the transfer is invariably made on the day when the second party is ready to dispose of the coal. The arguments presented by defendants in favor of the present rule are that in actual practice no demurrage accrues and that accounting difficulties would be met under a change of the rule which are not now met.

It is our opinion that except when consignee is operating under the average plan, the free time is granted to the car rather than to the consignee, the purpose of demurrage being to penalize the detention of the car beyond that period. It does not appear that the arguments offered by defendants should prevent a subsequent purchaser or consignee from having a privilege which belongs to the car. The shippers who execute and use the average agreement are given the same rights and credits in connection with a car which they sell or re-consign as on one that is unloaded. It does not, therefore, seem unreasonable to close the free time at time of reconsignment or when sale is consummated and ownership of coal passes to new consignee, in cases where the original consignee is operating under the average plan. The same argument is not applicable to straight demurrage. Then the car is entitled to a certain number of days of free time, and that time may not be arbitrarily shortened by defendants simply because the ownership of the contents of the car has changed. We are of the opinion that in case of change of ownership of coal the free time should follow the car when the car is not subject to the average plan of computing demurrage.

The general question of free time allowed on coal transhipped at tide water has been considered and discussed at some length in *Peale, Peacock & Kerr v. C. R. R. of N. J.*, *supra*, and we will not repeat here what was there said. We have seen from an examination of the exhibits that the average net detention, which excludes Sundays, legal holidays, and railroad delays, during the period April 1, 1907, to October 31, 1909, was in a vast majority of cases at Locust Point, Curtis Bay, Jackson street, and St. George, less than the present free time allowed, and that the average for the whole period at Locust Point and Curtis Bay was 3.1 and 3.30 days, respectively. It is argued by complainants that if this average was the basis on which the free time was fixed, inasmuch as the average free time is computed monthly, it is not fair. But the average time used month by month for all consignees at all of these ports, generally speaking, has been considerably less than the free time accorded. While the defendants in the establishment of their demurrage regula-

tions have given consideration to the difficulties due to irregular and uncertain vessel service, the fact that three firms transshipping over the piers at Locust Point and Curtis Bay are alleged to own their own vessels and are thereby enabled to dispose of the coal more promptly and expeditiously than consignees transshipping over the piers and who must depend upon chartered vessels or the vessels of the purchasers of the coal are able to, is not of itself sufficient to substantiate complainants' claim that the time should be extended. Unreasonable delays incident to the railroad transportation of the coal to tide water are, however, within the power of the carrier to prevent, and they should not be permitted to be the cause of demurrage against consignees. We can not accept as forceful defendants' argument that in cases of this kind consignees can borrow from each other to make up their cargoes. Such a practice would involve, constructively at least, a change of ownership of the coal.

The rate on which coal moves to tide water includes dumping into the vessel; in other words, the shipper does not perform the unloading. The free time allowed is therefore given for reasons entirely apart from the unloading feature. Appreciating the difficulties from which the tide-water coal business can not escape, defendants have granted to such shippers the free use of their terminals for storage purposes for the free time which is now allowed. The line shipper has his own storage facilities and is accorded but forty-eight hours free time. The principal complainant ships about 50 per cent of its shipments unsold and depends upon finding a purchaser while they are en route or after they reach the port. Obviously it would be to its advantage to hold the coal at the port as long as possible on a rising market. From all the facts in this case the Commission is unable to find that the free time now allowed is not sufficient from the standpoint of reasonableness.

But on the question of whether or not Locust Point and Curtis Bay are subjected to undue prejudice a different situation has been shown. It is the contention of the defendants, as previously indicated, that competition of the Philadelphia & Reading at Philadelphia and New York justifies the longer free time at those ports. It is to be noted, however, that this competition has not been found sufficiently potent to require the Pennsylvania Railroad Company to grant at Philadelphia, Baltimore, or Jersey City more than five and twelve days, respectively. Defendant Baltimore & Ohio Railroad avers that the competition of the Philadelphia & Reading at Philadelphia and New York affects it more severely than it does the Pennsylvania Railroad, because no coal originating on the Pennsylvania is dumped over the Reading's piers. If coal is diverted from the Baltimore & Ohio line and dumped over the Reading's piers it is done under an arrangement to which the Baltimore & Ohio is

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a voluntary party and such competition as is thereby created is that in which the Baltimore & Ohio competes with itself and joins the Philadelphia & Reading in creating competition with the points served only by the Baltimore & Ohio.

In *Georges Creek Basin Coal Co. v. B. & O. R. R. Co.*, 14 I. C. C. Rep., 127, the Commission found that coal water borne inside and outside the Chesapeake and Delaware capes meets a vigorous competition with coals from other districts. From this record it appears that coal moving over the piers at Locust Point and Curtis Bay is actively in competition with tide-water coal transported by defendant Baltimore & Ohio Railroad and moving over the piers at Jackson street, Philadelphia. We are not convinced that coal moving over the piers at Locust Point and Curtis Bay comes into such active competition with that moving over the piers at St. George, or that the circumstances and conditions at Locust Point and Curtis Bay, on the one hand, and at St. George, on the other hand, are so similar as to render it unjustly discriminatory to grant longer free time at St. George than at Locust Point and Curtis Bay. At St. George defendants must compete with other carriers and piers at and around New York Harbor. In *Peale, Peacock & Kerr v. C. R. R. of N. J.*, *supra*, it was found that conditions at the New York Harbor piers of the Central Railroad of New Jersey differed from those at St. George, and that disabilities of some New York Harbor piers were compensated for by lower rates. We are of the opinion that there is substantial similarity of circumstance and condition surrounding the transportation of coal by defendant Baltimore & Ohio Railroad over the piers at Locust Point and Curtis Bay with that transported by it moving over the piers at Philadelphia and that, inasmuch as all of these piers are on the lines of that defendant, complainants have been subjected to undue prejudice and disadvantage at Locust Point and Curtis Bay by not being accorded the same free time that was contemporaneously allowed by that defendant at Philadelphia, and are therefore entitled to reparation. Complainants may present to defendant Baltimore & Ohio Railroad for verification detailed statements of the shipments upon which reparation is claimed hereunder, and upon presentation to the Commission of agreed statement thereof proper order for payment will be issued. The case will be held open for such further proceedings and orders as may be necessary in the matter of reparation.

An order in accordance with the foregoing report will be entered.  
18 I. C. C. Rep.

No. 2684.

ANDERSON-TULLY COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY  
ET AL.

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*Submitted December 13, 1909. Decided March 14, 1910.*

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Rate on egg-case material, when not manufactured further than cut to length, from Memphis, Tenn., to Woodward, Okla., found unreasonable to the extent that it exceeded rate on box lumber. Rate for the future established. Reparation awarded.

*H. B. Anderson and Albert G. Riley* for complainant.

*E. B. Peirce and Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

*B. F. E. Marsh* for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

**COCKRELL, Commissioner:**

On October 12, 1907, complainant shipped a carload containing 81,000 pounds of box lumber, consisting of parts of egg boxes, securely tied in bundles and not manufactured further than cut to length, from Memphis, Tenn., to Woodward, Okla., via Oklahoma City, over the Chicago, Rock Island & Pacific Railway and the Atchison, Topeka & Santa Fe Railway. Charges of \$186, on basis of lawfully published through rate of 60 cents per 100 pounds, minimum 24,000 pounds, were collected. Formal complaint was filed July 12, 1909, wherein complainant attacks said rate as being unreasonable and unjust, alleges that it should not have exceeded the combination rate applicable to other kinds and classes of wooden-box stuff, and asks for reparation.

The defendant, the Atchison, Topeka & Santa Fe Railway Company, in its answer, stated that "the car in question was billed by the shipper as a car of box material, and the inspector changed it to read egg-case material;" that it has a specific commodity rate on egg-case material and that such rating must take precedence over a rating on

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box lumber or shooks. The other defendant, the Chicago, Rock Island & Pacific Railway Company, in its answer, states "that said shipment was inspected by the inspection department and it was found that the car contained egg-case material packed in bundles and consisting of sides, tops, bottoms, centers, and ends, and no fillers were included;" that the rate complained of is not unreasonable nor unjust, and that "egg-box stuff is not entitled to the same rate as is applicable to other kinds and classes of wooden-box stuff."

The complaint was amended at the hearing by adding a prayer for the establishment of a rate for the future. A memorandum was also submitted showing rates in force at the time of movement on box material from Memphis to Dodge City, Garden City, and Liberal, Kans., 32 cents per 100 pounds; to Denver, Colo., 34 cents per 100 pounds, and to Hastings, Nebr., 28 cents per 100 pounds.

The facts are as follows: According to the tariff, the 60-cent rate as charged applied on "egg-case fillers, egg boxes, egg-box stuff, wooden, in straight or mixed carloads, also when in mixed carloads with box or lumber shooks." At the time the shipment moved there was a combination rate of 44 cents, minimum 30,000 pounds, on box lumber via the route of movement, made up of 24 cents via Chicago, Rock Island & Pacific Railway, Memphis to Oklahoma City, and 20 cents via Atchison, Topeka & Santa Fe Railway, Oklahoma City to Woodward. There was also in effect a combination of local rates on box lumber between the same points over the same lines, via Chicago, Rock Island & Pacific Railway, to Alva, Okla., Santa Fe beyond, of 39 cents, being 29 cents Memphis to Alva, and 10 cents, Alva to Woodward.

This shipment was billed as box material and upon inspection en route the billing was changed to read "egg-case material" on which the 60-cent rate applied. No evidence was introduced by the defendants to explain or justify the action of the inspector. The contents of the car consisted solely of box lumber not manufactured further than but to length. Under the Western Classification, egg box material, carloads, when not manufactured further than cut to length, takes the box-lumber rate. Effective January 9, 1910, since the hearing in this case, supplement 4 to Southwestern Lines tariff 48-B, I. C. C. No. 629, naming rates on lumber, including box lumber, carloads, from Memphis, Tenn., to many Oklahoma points, provides for application of box-lumber rates on "egg-case material," without fillers, packed in bundles, comprised of sides, tops, bottoms, centers, and ends, having cleats attached, and the tariff shows a box-lumber rate of 29 cents from Memphis to Woodward via lines of defendants, which are named in the tariff as issuing lines. Effective March 10, 1910, Southwestern Lines tariff, I. C. C. No. 686, withdraws application of this rate from Chicago, Rock Island & Pacific Railway stations to points on the



Santa Fe in Oklahoma, thereby canceling the rate to Woodward, but still showing application of box-lumber rates to egg-case material as above described.

There is nothing to show that box lumber designed for use in the manufacture of egg boxes differs in any essential respect from lumber intended for the manufacture of boxes for other purposes, and no sound reason exists for a higher rate for the transportation of egg-box material, when not manufactured further than cut to length, than for other box material.

St. Louis & San Francisco tariff, I. C. C. No. 5126, in force at time shipment moved and still effective, names rate of 32 cents on box lumber from Memphis to Dodge City, Garden City, and Liberal, Kans. This rate to Garden City and Dodge City applies via the St. Louis & San Francisco Railroad to Cherryvale, Kans., Santa Fe beyond, and to Liberal, via the St. Louis & San Francisco Railroad, to Medora, Kans., Chicago, Rock Island & Pacific Railway, beyond. These three points and Woodward are in the same section of the country, Woodward being less distant from Memphis. From Memphis to Dodge City, a distance of 742 miles, the per-ton-per-mile revenue is 8.62 mills; from Memphis to Garden City, a distance of 792 miles, and from Memphis to Liberal, a distance of 793 miles, the revenue is approximately 8 mills per ton per mile. The distance from Memphis to Woodward via the direct route over the lines of defendants is 696 miles. A rate of 29 cents per 100 pounds for such transportation would be equivalent to a revenue per ton per mile of  $8\frac{1}{2}$  mills and would appear to be fully compensatory to the carriers and as high as should be charged.

In view of all the circumstances of this case our conclusions are, and we so find, that egg-case material, when not manufactured further than cut to length, should not take a higher rate than the box-lumber rate; that the rate of 60 cents per 100 pounds charged on this shipment was unjust and unreasonable in and to the extent that it exceeded a rate of 29 cents per 100 pounds; that a rate for the future on egg-case material when not manufactured further than cut to length, between Memphis, Tenn., and Woodward, Okla., via the lines of defendants, should not exceed 29 cents per 100 pounds, and that the complainant is entitled to reparation in the sum of \$96.10, with interest.

An order will be issued in accordance with these findings.

18 I. C. C. Rep.

No. 2465.

LIVERPOOL SALT &amp; COAL COMPANY ET AL.

v.

BALTIMORE &amp; OHIO RAILROAD COMPANY ET AL.

No. 2503.

DIXIE SALT WORKS

v.

SAME.

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*Submitted December 11, 1909. Decided March 14, 1910.*

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Defendants' proportional rate for the transportation of salt in carloads from certain points in West Virginia to Lynchburg and Roanoke, Va., respectively, when for points beyond in south Atlantic territory, found unreasonable, and a reasonable maximum rate prescribed for the future.

*Healy, Ferris & McAvoy* and *C. B. Ihle* for complainants.

*H. T. Wickham* for Chesapeake & Ohio Railway Company.

*R. Walton Moore* for Norfolk & Western Railway Company.

*W. A. Parker* for Baltimore & Ohio Railroad Company.

#### REPORT OF THE COMMISSION.

##### CLEMENTS, *Commissioner*:

The plants of the Liverpool Salt & Coal Company and the Hartford Salt Company, of Hartford, W. Va., and the Dixie Salt Works, of Mason City, W. Va., are located in a territory known as the "Pomeroy Bend" on the Ohio River. These companies complain of an advance in a proportional rate from 8 cents to 12 cents per 100 pounds on common salt in carloads from their respective places of origin, above indicated, to Lynchburg and Roanoke, Va., on shipments destined beyond these last-named cities to points in the south located on the lines of the Southern, Seaboard Air Line, and the Atlantic Coast Line railways. The initial carrier in each case is the Baltimore & Ohio Railroad, which delivers the shipments either to the Norfolk & Western Railway at Kenova, W. Va., which last-named

carrier takes them either to Roanoke, or to the Chesapeake & Ohio Railway at Huntington, W. Va., the latter carrying them thence to Lynchburg. The entire rate from origin to final destination in the south is the sum of the proportional rate of 12 cents to Roanoke and Lynchburg, respectively, and the rate beyond. Thus, for illustration, the rate from Hartford to Greenville, S. C., would be 12 cents to Lynchburg or Roanoke plus the rate of  $17\frac{1}{2}$  cents thence to Greenville, making a total of  $29\frac{1}{2}$  cents. But the only rate attacked is the separately established 12-cent proportional rate above stated.

This advance of 50 per cent in the rate complained of was made and is defended upon the contention by the defendants that the 8-cent rate was insufficiently remunerative and that the existing 12-cent rate is reasonable. It is alleged by the complainants that their sales and those of other salt producers in their vicinity have been materially reduced in the south Atlantic territory because of this advance in the rate.

Upon investigation of the matters involved and upon full hearing of the parties to the controversy, it is the opinion and finding of the Commission that the separately established proportional rate of 12 cents heretofore stated and complained of, in view of all the facts, circumstances, and conditions appearing, is unjust and unreasonable to the extent that the same exceeds a rate of 10 cents per 100 pounds and results in unreasonable and unjust total through charges of which it forms a part on shipments from said points of origin to the ultimate destinations in said south Atlantic territory. It is the conclusion of the Commission, therefore, that the reasonable and just rate to be charged by said defendant carriers, as their separately established rates as aforesaid, in the future as the maximum should not exceed 10 cents per 100 pounds upon carload shipments of the commodity involved, on the basis of the present carload minimum of 40,000 pounds. An order will be entered in accordance with these conclusions.

18 I. C. C. Rep.

No. 2736.  
COMMERCIAL CLUB OF OMAHA  
v.  
SOUTHERN PACIFIC COMPANY ET AL.

Submitted December 30, 1909. Decided March 7, 1910.

1. Without renewing the discussion of the question, fully considered in other cases, as to which side has the burden of proof in a proceeding attacking the reasonableness of an increased rate, it is clear that an order granting affirmative relief, and particularly in a case in which reparation is awarded, must be predicated on a definite conviction drawn from the record or from the Commission's own investigation, or from both, that the rate exacted on the shipments complained of was an unreasonable rate.
2. Defendants' prior rate of 85 cents per 100 pounds for the transportation of lima beans in carloads from certain points in California to Omaha, Nebr., found unreasonable, and their subsequently established 75-cent rate prescribed for the future. Reparation awarded.

*E. J. McVann* for complainant.

*N. H. Loomis, Edson Rich, P. F. Dunne, and F. C. Dillard* for Union Pacific Railroad Company and Southern Pacific Company.

*James C. Jeffery, H. J. Campbell, and B. M. Flippin* for Missouri Pacific Railway Company.

*E. N. Clark and T. L. Philips* for Denver & Rio Grande Railroad Company.

REPORT OF THE COMMISSION.

**HARLAN, Commissioner:**

This complaint, filed on behalf of three incorporated companies engaged in business at Omaha in the state of Nebraska, attacks as unreasonable a rate of 85 cents per 100 pounds demanded by the defendants under their published tariffs for the transportation to that point of certain carload shipments of lima beans made from Montalvo, Somis, and Saticoy, in the state of California, during the months of February, March, and April, 1909.

The allegation of unreasonableness is based primarily on the following facts:

From a period prior to January 18, 1900, until October 12, 1903, the defendants maintained a carload rate of 75 cents per 100 pounds, with a minimum weight originally of 24,000 pounds and later of 30,000 pounds, on all kinds of beans in packages shipped from California

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points to Omaha and all eastern territory, including the Atlantic ports. On the latter date the carload minimum weight was increased to 40,000 pounds without objection on the part of shippers so far as we are advised by the record. This minimum, as well as the 75-cent rate, was kept in effect until January 1, 1909, when the rate was advanced to 85 cents per 100 pounds, the carload minimum remaining unchanged. The advanced rate apparently extended to all points, including Omaha, formerly reached under the 75-cent rate. On June 5, 1909, the latter rate was restored to Omaha and to points in Texas, and apparently also to a few points in Minnesota, Iowa, Missouri, and Wisconsin. To all other points, including the larger part of the states last mentioned, the higher rate remains unchanged. During the interval these shipments moved, and charges were collected at the 85-cent rate. The complainant prays for reparation on the basis of the rate previously in effect and reestablished a few months after the date of the movements.

It will be observed that in practically all the territory lying east of Omaha and the upper Missouri River crossings the 85-cent rate still remains in effect. The subsequent restoration of the 75-cent rate to Texas and to Omaha and a few other points did not therefore involve a general readjustment of the rate on the previous lower rate level, but in effect was simply a withdrawal of those few points from the extensive grouping with which they had for many years been associated in connection with this traffic. It is said by the defendants in explanation of this course that shippers of lima beans from California to points in Texas had importuned the Sante Fe and the Southern Pacific for a restoration of the 75-cent rate into that territory on the ground that their sales in that state, under the 85-cent rate, had been somewhat checked by the competition of navy beans brought in through the Gulf ports. Those carriers, having satisfied themselves that these representations were well founded, restored the former rate to Texas points. The defendants assert that they accepted the judgment of the southern carriers without any investigation on their own part as to the effect of the competition through the Gulf ports on the California traffic, and thereupon restored the former rate to Omaha and the upper Missouri River crossings, on the general theory that it was only fair to shippers to those points to give them a rate that was not in excess of the Texas rate. The eastbound tariffs make no distinction between lima beans and other beans, and as the southern carriers had reduced the rate to Texas points without limiting the reduction to any particular variety on beans, the defendants made a similar reduction to Omaha.

The record establishes the fact that no lima beans are imported through the Gulf ports, and that none are produced in commercial quantities outside the state of California. The competition through

the Gulf ports that was felt in Texas was not the competition of lima beans produced elsewhere, but was the competition in the consuming markets of that state, of beans of a wholly different kind with the beans of California shipped there for local consumption. It was a competition of commodities rather than of rates. But there is no substantial proof that this competition extends so far north as Omaha. On the contrary, the continued maintenance of a rate of 85 cents to points in the Omaha territory tends to show that no such competition really exists. Notwithstanding the absence, or at least the very attenuated influence of such competition at Omaha, the defendants thought it well to restore the former rate to that point as well as to the upper Missouri River crossings. Beyond this explanation little evidence was offered by the defendants; but as tending to show that the 85-cent rate on lima beans, worth at Omaha from \$1,500 to \$2,000 a car, was not unreasonably high, they point to a 75-cent rate on potatoes, worth at the same destination probably not more than \$600 a car.

The complainant, on the other hand, relies largely on the fact that the rate of 75 cents per 100 pounds was in effect for a number of years, and after being advanced to 85 cents for a few months was subsequently restored, the defendants finding it necessary to do so because, as the complainant asserts, the higher rate had resulted in some restriction of the volume of shipments from California to Omaha and to the Missouri River crossings. Attention is also called to the changes made by the defendants in the minimum weights applicable to this traffic and to the resulting increase in their revenues per car. The carload minimum first established was 24,000 pounds, which, at the 75-cent rate, would give carload earnings of \$180. Upon a minimum of 30,000 pounds, which was effective up to October 12, 1903, the carload earnings at the same rate per 100 pounds amounted to \$225. On that date the carload minimum was increased to 40,000 pounds, which, at the rate of 75 cents per 100 pounds, yielded earnings of \$300 per car. The rate being increased to 85 cents per 100 pounds would, upon a minimum of 40,000 pounds, give the defendants earnings of \$340 per car. The defendants have therefore effected a very substantial increase in their earnings per car through the substantial increase in the carload minimum weights. At the 75-cent rate to Omaha the earnings per ton per mile are approximately 8 mills, which we can not regard as unduly low, considering the fact that lima beans are perhaps less subject to deterioration or injury in transit than almost any other vegetable that moves in volume, and consequently produces a minimum of loss and damage claims.

Counsel devote some attention on their briefs to the discussion of the question as to where the burden of proof lies when a rate long

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continued is advanced for a short period and then restored to its former basis, shipments being made while the higher rate was in force. That question has been fully considered in our reports in other formal complaints, and we shall not participate here in any further discussion of it. *Memphis Cotton Oil Co. v. I. C. R. R. Co.*, 17 I. C. C. Rep., 313. It will suffice to say that an order granting affirmative relief, and particularly in a case in which reparation is awarded, must always be predicated upon a definite conviction, drawn from the record or from our own investigations, or from both, that the rate exacted on the shipments embraced within the complaint was an unreasonable rate. And upon the history of this rate, together with all the facts shown of record, we have arrived at the conclusion that the 85-cent rate was unreasonable, and we so find. The long continuance of the lower rate and its subsequent voluntary restoration after the higher rate had been experimented with for a few months only, together with the fact that the car earnings of the defendants during the last few years have been twice materially increased through an increase in the carload minimum weights, are substantial facts in the history of the Omaha rate, the influence of which can not be ignored.

We find also from the record that the shippers on whose behalf the complaint was presented are entitled to reparation with interest as follows: McCord-Brady Company, \$81.39; Paxton & Gallagher, \$40.02; Allen Brothers Company, \$40.02; or a total of \$161.43. We also find that 75 cents per 100 pounds upon a carload minimum weight of 40,000 pounds will be a reasonable maximum rate for the future.

An order will be entered in accordance with these findings.

18 I. C. C. Rep.

No. 2970.

CROMBIE &amp; COMPANY ET AL.

v.

ATCHISON, TOPEKA &amp; SANTA FE RAILWAY COMPANY.

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*Submitted February 2, 1910. Decided March 7, 1910.*

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Complaint against class rates from Albuquerque, N. Mex., to El Paso, Tex., dismissed on agreement of defendant to satisfy complaint by promptly filing new tariffs. Case transferred to Informal Docket for adjustment of reparation.

*Rufus B. Daniel* for complainants.

*Robert Dunlap* and *T. J. Norton* for defendant.

## REPORT OF THE COMMISSION.

**HARLAN, Commissioner:**

This complaint, brought by nine merchants of El Paso, in the state of Texas, attacks the reasonableness of the through class rates of the defendant to that point from Albuquerque, in the territory of New Mexico, in that they are higher than the sum of the local rates based on Las Cruces, a point directly between Albuquerque and El Paso. It asks that class rates be established from Albuquerque to El Paso that are not in excess of the sum of the present local rates and that reparation be awarded on various less-than-carload shipments made during the years 1908 and 1909. Of the complainants, Crombie & Company ask reparation on shipments of vegetables and piñon nuts; D. M. Payne on shipments of vegetables and box shooks; Goodman Produce Company, J. H. Nations Meat & Supply Company, Overland Market Company, and Charles Zieger on shipments of vegetables; James A. Dick Company on canned goods; Haymon Krupp on one shipment of clothing and hardware. Those shipments were from Albuquerque to El Paso. The Gus Momsen Company demands reparation on a single less-than-carload shipment of corrugated iron, nails, and coping moving from El Paso to Albuquerque.

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The through class rates from Albuquerque to El Paso are as follows, in cents per 100 pounds:

Class.....	1	2	3	4
Rate.....	142	130	123	112

The local class rates, based on Las Cruces, yield through charges as follows:

	Class.			
	1.	2.	3.	4.
Albuquerque to Las Cruces.....	Cents. 70	Cents. 63	Cents. 57	Cents. 49
Las Cruces to El Paso.....	33	33	33	33
Combination rate.....	103	96	90	82

It is thus seen that the through rates from Albuquerque to El Paso exceed the combination through charges as follows, in cents per 100 pounds:

Class.....	1	2	3	4
Rate.....	39	34	33	30

Under the Western Classification vegetables are given a rating of from double first class to third class, according to their kind and the manner of their packing. Vegetables moving over the lines of the defendant from Pacific coast points, however, take the fourth class rate, and the contention of the complainants is that this rate should obtain on shipments of vegetables from Albuquerque to El Paso. It is asserted by the defendant that an exception of this sort to the classification may often be made for long distances, but its enforcement for short hauls would usually be a hardship upon the carrier. While unwilling to place vegetables in the fourth class when moving from Albuquerque to El Paso, it is willing to establish a commodity rate for that service of 82 cents per 100 pounds, this being precisely the same as the proposed fourth class rate, and it is also willing on that basis to award reparation on the shipments in question. The attorney for the complainants expresses his satisfaction with this arrangement, provided the proposed commodity rate is tried for at least one year. Under these circumstances, and on the understanding that the defendant will promptly publish that rate and give it a trial for at least that length of time, we shall enter no order to control the rate for the future.

That disposition of the complaint as to the rates on vegetables satisfies the contention of the Goodman Produce Company, J. H. Nations Meat & Supply Company, Overland Market Company, and Charles Zieger. One complainant, the Gus Momsen Company, shipped from El Paso to Albuquerque on or about February 23, 1909,

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95 bundles of corrugated iron, one keg of nails, and one bundle of coping, of the aggregate weight of 12,595 pounds. Charges were collected on this shipment to the amount of \$141.06, being at the fourth class rate of \$1.12 per 100 pounds. It is alleged that this rate is unreasonable and unjust, and that a just and reasonable rate would be 82 cents per 100 pounds. This the defendant denies. While it is willing to establish from Albuquerque to El Paso the rates demanded by the other complainants, namely, through rates equal to the sum of the present local rates into and out of Las Cruces, it is unwilling to establish the same rates northbound from El Paso to Albuquerque. It asserts that conditions surrounding northbound traffic are dissimilar to those existing as to southbound traffic; that it has in preparation a new schedule of rates from El Paso to Albuquerque and to practically all points on its line in the territory of New Mexico under which a reduction of material proportions will result, and that it believes that the new rates will enable the shippers at El Paso to distribute goods more extensively in the surrounding territory. The defendant is willing to grant reparation on the shipment in question on the basis of the new schedule when established. Upon these assurances the Gus Momsen Company asks leave to withdraw its complaint. We assume that the subject matter of that complaint will come to our attention informally, and therefore the petition will be dismissed as to that complainant.

The claims arising out of the shipment of piñon nuts made by Crombie & Company, and of clothing made by Haymon Krupp, are disposed of by the subsequent establishment, on those commodities, of the first class rate of \$1.03 between the two points; the shipments of box shooks and canned goods made by D. M. Payne and the James A. Dick Company are disposed of by making the fourth class rate of 82 cents per 100 pounds applicable on that kind of merchandise, and the shipment made by Haymon Krupp is disposed of by giving to hardware the second class rate of 96 cents per 100 pounds.

The defendant thus accedes to all the demands of the complainants and asks authority to settle the overcharges on the Informal Docket.

An order will be entered accordingly.

18 L. C. C. Rep.

No. 1963.  
BERNARD ESCHNER  
v.  
PENNSYLVANIA RAILROAD COMPANY ET AL.

*Submitted January 4, 1910. Decided March 7, 1910.*

1. Defendants' published tariffs prohibit the use of an exchange order in connection with an ordinary mileage book as a warrant for checking the holder's baggage or securing through sleeping accommodations from any point on the Pennsylvania lines west of Pittsburg to a point on said lines east thereof, or *vice versa*. Upon complaint that such a provision in the tariffs is unreasonable and discriminatory; *Held*, That the right to use exchange orders and mileage books is in the nature of a privilege voluntarily accorded by carriers under their tariffs, and must be accepted by those who use such special fares with all lawful and nondiscriminatory limitations that may be attached to them.
2. The language of the act relating to the issuance of mileage, excursion, and commutation tickets is altogether permissive, and the Commission has no affirmative power to require carriers to establish, for the use of passengers on particular occasions or for special purposes, special fares based upon less than a normal passenger-mile revenue.

*Bernard Eschner* for complainant in person.

*John E. Faunce* for Pullman Company.

*J. J. Brooks* for Pennsylvania lines west of Pittsburg.

REPORT OF THE COMMISSION.

*HARLAN, Commissioner:*

The Central Passenger Association, composed of carriers operating in a territory substantially identical with what is often referred to as the percentage basis territory, issues a mileage book known as the "Central Passenger Association interchangeable mileage exchange order," which for convenience is hereinafter referred to as an exchange order. The original purchaser of such an order is entitled to 1,000 miles of transportation over the lines named on the back of the book including, among others, the Pennsylvania lines west of Pittsburg, but not the Pennsylvania lines east of that point, Pittsburg being on the eastern boundary of the Central Passenger Association territory. The exchange order is not honored by conductors on the trains nor is it

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accepted by baggage agents as a warrant for checking the holder's baggage. It must be presented at a ticket office where coupons, representing the number of miles from the point of departure to the point which the holder desires to reach, are extracted from the book by the ticket agent and in exchange the holder receives a continuous passage ticket. This ticket may be used in checking the holder's baggage and is accepted by conductors on trains when presented in connection with the exchange order. The book is sold at the rate of 3 cents per mile, but, on the return of the cover and a showing that the book has been used in compliance with the conditions printed upon it, a refund is made to the original purchaser at the rate of 1 cent per mile. The cost of the transportation to the purchaser, therefore, amounts to 2 cents per mile when the book has been exhausted and returned to the company as provided in the regulations under which it is sold. The exchange order is not transferable.

The Pennsylvania Railroad Company issued a mileage book known as a "1,000-mile ticket," which entitles the holder to travel 1,000 miles on the Pennsylvania lines east of Pittsburg. This limitation appears on the face of the book. It is sold at the rate of 2 cents per mile and is transferable, being honored in the checking of baggage and by the conductor on the train when presented by the holder whether the original purchaser or not.

For the purpose of obtaining a berth in a Pullman sleeping car and for the purpose also of checking his baggage from Cleveland, in the state of Ohio, through Pittsburg to Philadelphia, in the state of Pennsylvania, the complainant, on three different occasions, on presentation of an exchange order originally purchased by him, had obtained a ticket entitling him to transportation over the Pennsylvania lines from Cleveland to Pittsburg. These tickets, when offered in connection with a mileage book entitling him to transportation over the Pennsylvania lines from Pittsburg to Philadelphia, were not honored at Cleveland, either for the checking of his baggage through to Philadelphia or as entitling him to through accommodations in a sleeping car. The two tickets were not accepted as a compliance with the rules and regulations of the defendants in connection with these through privileges. The complainant therefore took a seat in a sleeping car at a rate of 50 cents to Pittsburg, at which point he was compelled to disembark in order to secure a berth to Philadelphia, for which he paid the sum of \$2. It was necessary also to recheck his baggage at Pittsburg. The sleeping-car rate from Cleveland to Philadelphia is \$2.50, so that his seat to Pittsburg and his berth to Philadelphia cost him no more than the through accommodations would have cost. The petitioner complains, however, of the inconvenience of being required to disembark

at Pittsburg to secure a berth for the night and to recheck his baggage to destination. The allegation is that such a requirement is unreasonable and also that it involves a discrimination against him in favor of passengers who use tickets purchased at the regular published tariff fares and who are able therefore not only to check their baggage through from Cleveland but also to secure through sleeping-car accommodations. He points out also that when westbound from Philadelphia to Cleveland he has been able, on presentation of the same tickets, to check his baggage through to destination and to secure through sleeping-car accommodations. If this be the practice of the defendant it would seem to be unlawful under its present tariff to which reference is hereinafter made.

It may be well to add that the joint through fare from Cleveland to Philadelphia is \$11.50, and this is the only through rate legally established under the tariffs of the defendants. The distance between the two points is 481 miles, and if mileage books are used at the rate of 2 cents per mile the total cost to the passenger is \$9.62, or \$1.88 less than the through fare. But this difference in cost for the same transportation seems to have no special significance, for as pointed out in the case to which we shall now refer the use of a mileage book ordinarily gives local transportation to the holder at less than the regular local fare, and there is no reason now apparent why such books if legally made applicable to through journeys should not yield like results.

Under the published tariffs of the Pullman Company, applicable to the service performed by it over the lines of these defendants, sleeping-car accommodations are "sold only to passengers holding transportation required by the railway companies concerned." In *Kurtz v. P. R. R. Co.*, 16 I. C. C. Rep., 410, this was held to be a reasonable regulation. But in that case we held in substance that a passenger presents such transportation as is "required by the railway companies concerned" for an interstate passage through Pittsburg over the lines of these defendants, when he presents an exchange order of the character heretofore described, together with an ordinary Pennsylvania mileage book, as was done by this complainant on three different occasions, as heretofore stated. And we said that if the defendants desired to prevent the use of these two classes of mileage books from having the effect of destroying the integrity of their published through rates they should so provide by proper restrictions and conditions in the tariff under which the mileage books are sold and in the contracts appearing on the back of the books themselves. Since our conclusions in that case were announced the defendants have pursued the course suggested by publishing a tariff prohibiting the use of an exchange order, with an ordinary mileage book, either as a warrant for checking the holder's baggage

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through from any point on the Pennsylvania lines west of Pittsburg to a point on the Pennsylvania lines east of Pittsburg, or *vice versa*. The same tariff also denies to the holders of such books the privilege of securing through accommodations between such points in the sleeping cars operated over the defendant lines.

Although some comments are made in *Kurtz v. P. R. R. Co.*, *supra*, tending to sustain the reasonableness of such a limitation upon the use of mileage books, if properly published in the defendants' tariffs in conformity with the rules and regulations of the Commission, which perhaps are to be regarded as decisive of the issue now brought before us in this proceeding, the question was really not involved in that case and seems to have been reserved for further consideration when properly before us, as it now is. This complaint therefore requires us to decide whether the limitation which has now been carried into the tariffs of the defendants is lawful.

The act to regulate commerce is an expression of the essential injustice and iniquity of special privileges in interstate transportation, and it was doubtless on the theory that mileage books, by the use of which the holder may get transportation at less than the regularly published fare required of the general public, are more or less discriminatory in their results and therefore might be held to be illegal under certain provisions of the act, that led the Congress to insert in section 22 a clause as follows:

That nothing in this act shall prevent \* \* \* the issuance of mileage, excursion or commutation passenger tickets.

This language, as will be observed, is altogether permissive and has never been understood as giving the Commission authority to require interstate carriers to sell interstate transportation in that form. In *Field v. Southern Ry. Co.*, 13 I. C. C. Rep., 298, when that clause was under consideration, we said:

The Commission has no affirmative power to require carriers to establish special fares, based upon less than the normal passenger-mile revenue, for the use of passengers on particular occasions or for special purposes. This was so held in *Cator v. So. Pac. Co.*, 6 I. C. C. Rep., 113, and in *Sprigg v. B. & O. R. R. Co.*, 8 I. C. C. Rep., 443, and the question is not to be regarded therefore as open to further discussion.

If mileage, excursion, or commutation tickets are voluntarily put on sale by carriers, under tariff authority, that clause in the act means that they are to be exempted from a condemnation that other provisions of the act might require. We think it clear, therefore, that a carrier may not only withhold such special fares from its patrons by omitting to provide for them in its tariffs, but may at its pleasure, at least so long as no undue discrimination or other violation of the act is involved, attach conditions and restrictions to the use of such special fares. The evident purpose of the defendants in  
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limiting the use of mileage books between points east of Pittsburg, and of exchange books between points west of Pittsburg, was to protect the published through fare by refusing the right of the original purchaser of the one and the holder of the other to combine the two and thus secure through transportation at less than the through fare. This end is accomplished by compelling the lawful holder of such books to endure, in return for the lower cost of his through journey, the inconvenience of having to recheck his baggage at Pittsburg and the inconvenience of not being able at the point of departure to assure himself of the same or indeed of any sleeping-car accommodations through to destination. It seems but natural that a passenger who has paid less than the regular fare paid by the general public should not have precisely the same privileges and advantages, or, to put the thought in another way, we see no impropriety in giving the passenger who has paid the regular fare some privileges and advantages that are not accorded to a passenger who has paid less than the regular fare. If a carrier may extend or withhold the privilege of mileage, excursion, and commutation tickets, it would seem to follow that it may attach to them, as an integral part of the contract, conditions of the kind involved in this proceeding; and since we can not compel carriers to issue such tickets, we see no grounds upon which we may compel them to modify the conditions which they attach to them, so long, at least, as these conditions result, as heretofore stated, in no discrimination nor in the violation of any other provision of the act. The complainant alleges that the defendants are guilty of discrimination in withholding from the purchasers of mileage books and exchange orders the right to check their baggage through to destination and to purchase through sleeping-car accommodations, and, at the same time, granting such privileges to the general public who purchase regular passenger tickets. The allegation is manifestly without merit, for the complainant is not compelled to purchase mileage books and exchange orders, but may secure the benefit of those through privileges by purchasing a regular ticket. In a word, the right to use exchange orders and mileage books is in the nature of a privilege voluntarily accorded by carriers under their tariffs and must be accepted by those who use such special fares with all lawful and nondiscriminatory limitations that may be attached to them.

The complaint must be dismissed, and it will be so ordered.

18 I. C. C. Rep.

No. 2020.  
MALDONADO & COMPANY  
v.  
FERROCARRIL DE SONORA ET AL.

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*Submitted February 10, 1910. Decided March 7, 1910.*

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For a shipment of dried pease, known as garbanzo, from Guaymas, Mexico, to the complainant at Philadelphia, consignor ordered a sufficiently large car, but the initial line for its own convenience furnished two smaller cars. Charges were collected on the minimum weight prescribed for each car. Reparation awarded on the basis of the actual weight of the shipment.

*Franc, Neuman & Newgass* for complainant.

*Gordon M. Buck* for Ferrocarril de Sonora, Southern Pacific Company, Galveston, Harrisburg & San Antonio Railway Company, and Southern Pacific Company (Atlantic Steamship Lines).

*W. P. Levis* for Clyde Steamship Company.

REPORT OF THE COMMISSION.

*HARLAN, Commissioner:*

The complaint, which was presented to us informally on July 28, 1908, involves a shipment of 300 bags of Mexican dried pease, known in the trade as garbanzo, made on August 2, 1906, from Guaymas, in the Republic of Mexico, to Philadelphia, in the state of Pennsylvania. The confusion and lack of definiteness that characterizes the record is explained by the fact that the hearing was held in New York, while the acts that gave rise to the claim occurred in Mexico, and the agent of the principal defendant who billed the shipment is no longer in its employ and was not accessible when the hearing was had. We are satisfied, however, that the record and the agreed statement of additional facts subsequently filed by the parties at the request of the Commission indicate a frank effort to place all the reasonably obtainable information before us and justify us in stating the case as follows:

There is a substantial movement of Mexican pease to the American markets, and shipments are made in sacks weighing on the average



220 pounds. Ordinarily garbanzo are sold in lots of 200, 250, or 300 bags, weighing, respectively, 44,000, 55,000, and 66,000 pounds. The charge to Philadelphia is a joint through rate of 75 cents per 100 pounds upon a carload minimum weight of 40,000 pounds, there being no graded minimum weights applicable to cars of different capacities. It is shown, however, that 200 sacks weighing 44,000 pounds may ordinarily be loaded into a car of the marked capacity of 40,000 pounds, 250 sacks weighing 55,000 pounds may ordinarily be loaded into a car of the marked capacity of 50,000 pounds, and 300 sacks weighing 66,000 pounds may be loaded into a car having a marked capacity of 60,000 pounds. The rules of the principal defendant now in force expressly permit the loading of its cars to 10 per cent in excess of their marked capacity. That was also its practice, if not expressly authorized by its rules and regulations, at the time when the shipment in question was made.

There are filed of record a number of bills of lading showing shipments to complainants of garbanzo in lots of 250, 300, and 409 bags. These bills of lading indicate the weight of these shipments, respectively, as 55,120, 66,140, and 90,168 pounds. All these shipments went forward under the rate and minimum weight above mentioned.

Having sold to the complainant 300 bags of dried pease, the consignor at Guaymas ordered a car large enough to hold the shipment. The Ferrocarril de Sonora, being the initial carrier, for its own convenience furnished two cars, neither of which was large enough to take the entire shipment. Half the bags were therefore loaded into each car. The 300 bags were delivered to the initial carrier on the same day and by the same consignor, destined to the same consignee at Philadelphia; but two bills of lading were made out and signed by the local agent, who was apparently under the impression that a separate receipt was required for each car. In that manner the shipments went forward, and the result was that the complainant was required at destination to pay the 75-cent rate on each car and upon a minimum carload weight of 40,000 pounds. In other words, the total charges were collected on a basis of 80,000 pounds, although the actual weight of the shipment was but 66,000 pounds. Reparation is therefore demanded in the sum of \$105.

While the published tariffs under which the joint through rate of 75 cents is shown and which were in effect at the time of the movement seem to contain no rule authorizing the application of the regular carload rate when two smaller cars are used for the carrier's own convenience, although a larger car capable of taking the shipment is ordered, such a rule, however, appears now to be in effect. It provides in substance that when the carrier is not able to furnish a

car of the dimensions ordered it may use two smaller cars on the basis of the minimum weight fixed for the car ordered if the car ordered is of the length or capacity in use by the company. We infer from the record that not only was the initial carrier in possession of cars of the size ordered, but it had repeatedly moved Mexican dried pease from the point in question in carload lots of 66,000 pounds.

Under all these facts shown of record we find that the complainant is entitled to reparation in the sum of \$105, with interest, and an order to that effect may be entered against the defendant, the Southern Pacific Company, it being understood that the other carriers defendant are to bear their share of the damages in proportion to their agreed divisions of the joint through rate.

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No. 2750.

MEMPHIS FREIGHT BUREAU

*v.*

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY.

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*Submitted February 5, 1910. Decided March 7, 1910.*

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1. The rules of the Commission, while not overlooking the definite requirements of the law, were intended to relieve complainants from the observance of the technical rules of pleading in order that shippers unskilled in such matters might bring their troubles to us in their own proper persons.
2. An informal complaint showing the date of the shipment, its actual weight, the rate charged and collected, and all other facts necessary to identify it, coupled with the claim that there was an overcharge on the shipment in that the carrier applied a 10-cent rate instead of a 6-cent rate is a sufficient presentation or filing of the claim to stop the running of the limitation of actions provided in section 16 of the act. Such an informal complaint sufficiently alleges a violation of the act and therefore sets up a cause of action as in that section provided.
3. A rate of 10 cents per 100 pounds on cotton-seed meal and hulls formerly published by the defendant from Little Rock and Pine Bluff, Ark., to Memphis, Tenn., declared unreasonable and reparation awarded.

*T. K. Riddick and James S. Davant* for complainant.

*S. H. West and Roy F. Britton* for defendant.

18 L. C. C. Rep.

## REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

On April 6, 1906, Messrs. F. W. Brode & Company shipped a carload of cotton-seed meal and hulls, weighing 47,800 pounds, from Little Rock, in the state of Arkansas, to Memphis, in the state of Tennessee, and on April 10 of the same year they shipped to Memphis from Pine Bluff, in the state of Arkansas, a carload of cotton-seed hulls weighing 33,750 pounds. On both shipments a rate of 10 cents per 100 pounds was charged, and in this complaint, filed on behalf of the consignors, reparation is demanded on the basis of 6 cents per 100 pounds on the ground that the rate exacted was excessive and unreasonable.

The defendant pleads the statute of limitations in bar of the action and also claims that the 10-cent rate was a reasonable charge for the service rendered.

While the shipment moved in April, 1906, and the formal complaint was not filed until August 7, 1909, the record before us shows that it was presented informally for our attention on August 9, 1906, and, as we have heretofore held, the informal presentation of a claim of this character suffices to interrupt the running of the statute of limitations. See *Kaye & Carter Lumber Co. v. M. & I. Ry. Co.*, 16 I. C. C. Rep., 285.

The defendant, however, takes the position that the informal complaint was defective in form and was not sufficient to stop the running of the statute in that it did not charge any violation of the act, but was merely a demand for a refund, based solely on the ground that the rate then in effect between the same points over the Iron Mountain Railroad was 6 cents per 100 pounds, or 4 cents lower than the rate then charged by the defendant. It is insisted, therefore, that the informal complaint was not a "complaint for the recovery of damages" within the meaning of section 16 of the act; and in order to have a standing before the Commission the defendant contends that it was necessary for the shippers, prior to April 6, 1908, to have presented a petition setting up a "cause of action;" that is to say, a petition alleging a violation of the act in that an unreasonable rate was exacted. In support of this view the defendant refers to what is said by the Commission in *Mo. & Kans. Shippers' Asso. v. A., T. & S. F. Ry. Co.*, 13 I. C. C. Rep., 411, and other cases. We think, however, that the informal complaint satisfies all the requirements of the statute, and also satisfies anything that has been said by the Commission in the cases cited. Not only are the two shipments referred to and described in the informal complaint, but the rate exacted and the rate which, in the judgment of the consignors, would have been a fair and reasonable rate, are mentioned. Inclosed

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with it are copies of the claim papers filed with the defendant, in which all the details, including date of the shipments, the actual weights, the rate charged and collected, and all other facts necessary clearly to identify the shipments, are set forth under a claim that the defendant made an overcharge "in assessing freight from Little Rock to Memphis" by charging 10 cents instead of 6 cents per 100 pounds. The lengthy and vigorous correspondence that ensued between the Commission, the shippers, the complainant, and the defendant in the effort to arrive at an adjustment of the claim finally reached a point where the Commission was compelled to close the informal record because of the unwillingness of the defendant to admit that the 10-cent rate then in force was an unreasonable rate. Without such an admission the claim could not be acted upon by the Commission informally. Finally this formal complaint was filed.

The practice rules long ago adopted by the Commission, while not overlooking the definite requirements of the law in this respect, were intended to relieve complainants, so far as possible, from the observance of the technical rules of pleading, in order that shippers unskilled in such matters might bring their troubles to our attention in their own proper persons. The original complaint of the shipper is informal only in the sense that, considered as a pleading, it is altogether inartificial. The essential facts, however, appear, and the document can not be read without observing that its purpose was to secure the aid of the Commission in adjusting the alleged wrong on the part of the defendant in exacting a rate of 10 cents instead of a rate of 6 cents, the benefit of which the shippers could have enjoyed had they moved their shipments to destination over a competing line. The latter rate is referred to in the informal complaint as evidence tending to show the unreasonableness of the 10-cent rate exacted by the defendant. If therefore informal complaints of this character are to be accepted under section 16 of the act as a presentation or filing of such claims, we see no reason for not according that effect to the informal complaint of these shippers thus made on August 9, 1906.

Upon a consideration of the merits of the complaint we think it is well founded. While the fact that the Iron Mountain, at the time these shipments moved, maintained a rate of 6 cents between the same points for the same service is not conclusive proof of the unreasonableness of the 10-cent rate demanded and collected by the defendant, it nevertheless tends to show that the latter rate, in the view of the rate makers of the Iron Mountain, was in excess of a normal rate. But a more important fact in the history of the rates on this traffic between the points in question is that on August 4, 1906, only four months after the date of the shipment, the Arkansas

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Freight Committee filed a tariff that became effective on August 15, and is still in force, naming a carload rate, on cotton-seed meal and cake, straight or mixed, or mixed with hulls, to Memphis from both these points of origin, of 8 cents per 100 pounds, and this rate is still in effect over both lines. It is a fair inference to draw from these facts that the Iron Mountain had found the 6-cent rate too low, while the Cotton Belt had arrived at the conclusion that its 10-cent rate was too high. The 8-cent rate was therefore made effective on the same date over both lines, and the results have led neither to make any change in the rates since that time. The same tariff continued in effect over the Iron Mountain a rate of 6 cents on cotton-seed hulls from these points of origin to Memphis and established a rate of 8 cents for the same service by the defendant. These rates are still in effect.

Under all the facts shown of record we have arrived at the conclusion, and so find, that the rate exacted by the defendant on this traffic was excessive to the extent that it exceeded the 8-cent rate shortly thereafter established. We further find that the complainant is entitled to reparation on that basis with interest.

An order will be entered giving effect to these findings.

18 I. C. C. Rep.

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No. 2082.

GEORGE TRITCH HARDWARE COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY  
COMPANY.

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*Submitted April 24, 1909. Decided January 4, 1910.*

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Reparation awarded because of unreasonable rate charged for the transportation of one carload of hand agricultural implements from Omaha, Nebr., to Denver, Colo.

*G. M. Stephen and Charles K. Warren* for complainant.  
*E. B. Peirce* for defendant.

## REPORT OF THE COMMISSION.

**HARLAN, Commissioner:**

On January 9, 1908, the complainant, a dealer in hardware at Denver, in the state of Colorado, received from Omaha, in the state of Nebraska, a shipment of hand agricultural implements weighing 25,000 pounds, on which it paid freight charges to the amount of \$240 at a through commodity rate of 80 cents per 100 pounds on a minimum carload weight of 30,000 pounds. It appears that this rate was established by the defendants on July 2, 1907. Prior to that time carloads of hand agricultural implements from Omaha to Denver moved under the third class rate, which was also 80 cents per 100 pounds, but which carried a minimum of 20,000 pounds. This class rate and minimum continued in effect until November 1, 1908, although it was of course superseded by the commodity rate heretofore mentioned, and therefore was not available to shippers. On the last-mentioned date the Western Classification was amended and the minimum weight on carloads of this traffic was increased to 24,000 pounds. With this minimum the class rate has remained in effect until the present time, as has also the through commodity rate of 80 cents per 100 pounds.

It will be observed that as the complainant's shipment weighed only 25,000 pounds, the charges thereon would have been less at the  
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class rate of 80 cents and minimum of 20,000 pounds than at the 80-cent commodity rate with a minimum of 30,000 pounds. It is this that gives rise to the complaint, the prayer being for reparation to the extent of the charges paid in excess of the actual weight of the shipment.

On January 18, 1909, by a proper rule in the tariff naming the commodity and class rate, the defendant provided for the alternative use of the two rates, thus making available the lower minimum weight of 24,000 pounds applying in connection with the class rate. This rule remains in its tariff at the present time.

Under the circumstances, we find that the complainant was subjected to unreasonable charges on the shipment in question to the extent of \$40, with interest, which represents the charge over and above the actual weight of the shipment. An order will be entered accordingly.

18 I. C. C. Rep.

No. 1970.  
GREATER DES MOINES COMMITTEE  
v.  
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY  
ET AL.

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*Submitted December 17, 1909. Decided February 8, 1910.*

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Complainant seeks a readjustment of rates from Des Moines, Iowa, to points in western Minnesota and North and South Dakota whereby such rates shall be fixed percentages of the Chicago rate to the same points, with a readjustment of rates from points intermediate Chicago to Des Moines on the same basis; *Held*, That the Commission on this record is not justified in ordering the establishment of rates to this territory upon the mileage and percentage basis asked.

*Guernsey, Parker & Miller* for complainant.

*William Ellis* for Chicago, Milwaukee & St. Paul Railway Company.

*S. A. Lynde* and *E. B. Peirce* for Chicago & North Western Railway Company and Chicago, Rock Island & Pacific Railway Company.

*George W. Seevers* for Minneapolis & St. Louis Railroad Company.

REPORT OF THE COMMISSION.

**COCKRELL, Commissioner:**

The complainant charges that the city of Des Moines, its merchants and manufacturers, are engaged in commerce moving over the lines of the defendants, covering the western portion of Minnesota and the states of North and South Dakota and the territory west thereof.

That the cities of Chicago, Ill., St. Louis, Mo., and Dubuque, Davenport, Clinton, Muscatine, and Burlington, Iowa, compete with Des Moines, its merchants and manufacturers, for the commerce in question and that such competition is not limited to said cities, but exists generally in the territory east of them; that Des Moines is nearer to the cities in Minnesota and North and South Dakota and west thereof than either of the points with which it is so in competition and is entitled, as against the competitive points named, to an advantage in the trade in the said competitive territory.

The complainant gives a list, by title and numbers, of 22 tariffs of the defendants and six tariffs of the Western Trunk Line Committee  
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to which the defendants are parties, having rates applicable to the traffic in question, and charges that the rates fixed by said tariffs between Des Moines and said competitive points are grossly excessive, unjust, and illegal; that they are unlawful, among other things, in that they give undue and unreasonable preference and advantage as against Des Moines, its merchants and manufacturers, to the said competitive cities and their merchants and manufacturers and subject the various merchants and manufacturers of Des Moines and the city of Des Moines to undue and unreasonable prejudice and disadvantage.

Complainant prays that an order be made commanding the defendants to desist from said violations of law and that they be required to put in force between the city of Des Moines and points in the competitive territory north and northwest of the city of Des Moines, referred to in the complaint, just and reasonable rates which shall not discriminate against said city of Des Moines and its citizens, and shall not grant to any other persons or localities undue preference or advantage.

No reparation whatever is asked.

Defendants deny the material statements of the petition and allege that the rates therein complained of are just and reasonable under existing circumstances and conditions and are not unjustly discriminatory or unduly preferential or prejudicial.

Hearings were had May 22 and June 28, 1909, and the case was argued December 17, 1909.

At the beginning of the hearings complainant, by its attorney, stated:

Evidence will be offered for the purpose of showing discrimination against Des Moines in favor of various towns on the river, practically from St. Louis to St. Paul.

Complainant also alleges that the rates complained of are unreasonable in and of themselves, and states:

There will be no effort to prove this by going into the cost of the railroads, the cost of operating, or things of that kind, but there will be some comparisons made that will have that in mind. Briefly, that is a general outline of what we will claim.

No complaint is made that any specific rate is unjust or unreasonable or unjustly discriminatory, and no specific commodities are named. The charge made by the complainant is that the rates in the defendant's tariffs are unlawful, because they subject the city of Des Moines, its merchants and manufacturers, to undue and unreasonable prejudice and disadvantage on shipments outbound from Des Moines to points in the west and north, and give to their competitors at Chicago, St. Louis, and Mississippi River cities an undue and unreasonable preference and advantage in like shipments to the same destinations. By these charges of discrimination in the 28 tariffs referred to by title and number in the complaint, complainant brings into

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question the whole rate structure applicable to shipments from Chicago and from St. Paul to St. Louis and intermediate Mississippi River points. The complainant in its petition names typical points, Pipestone, Minn.; Aberdeen, Mitchell, Sioux Falls, Watertown, and Yankton, S. Dak., and Fargo, N. Dak., to which the rates in the tariffs named discriminate against Des Moines and illustrates such discrimination by voluminous comparisons of rates.

At the hearings the complainant, through its freight commissioner as a witness, presented 42 exhibits, and by other witnesses 18 exhibits, containing data, statistics, rates, and distances, with comparisons and calculations based upon the actual rates and mileages between given points and upon the application of interstate distance tariffs between the same points and upon a hypothetical rate applied between such points on such mileage, and also numerous per-ton-mile calculations and comparisons, with statements and explanations. Many of the exhibits contain numerous comparisons of per-ton-mile calculations constructed upon this so-called hypothetical rate basis; that is to say, the interstate distance tariff of the Chicago & North Western is taken as a measure. The mileage from Chicago to a point in South Dakota is ascertained, and for that mileage the interstate tariff rate is determined. The actual rate from Chicago is found to be a certain percentage of the interstate mileage tariff rate; applying the resulting percentage of the mileage tariff rate to the Des Moines distance from the same point, the hypothetical Des Moines rate is ascertained. Comparisons upon this basis and upon the basis of the Iowa distance tariff from Chicago and from other points, including calculations extending to all points in controversy, are contained in such exhibits.

The complainant contends that Des Moines is unjustly discriminated against because Des Moines rates are shown to be relatively higher than from Chicago and points based on Chicago, and much stress is put on the word "relatively."

Complainant in its brief says:

In the abstract the complainant is entitled to a rate adjustment which places it relatively upon the same basis as its competitors.

In its reply brief it says:

Our proof was offered for the purpose of showing that the rates from Des Moines to this competitive territory are relatively higher than those from competitive points. This is conceded by the defendants.

It then quotes from the brief of defendants:

Thus, to illustrate further and state our position more emphatically, compare Des Moines with St. Paul and Minneapolis: As long as the Duluth gateway furnishes to St. Paul and Minneapolis the advantage over Des Moines, which it certainly does, and as long as St. Paul and Minneapolis are able to reach the territory in controversy by direct lines, in addition to their advantage in having the Duluth gateway at their

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doors, there will always be an advantage in favor of the St. Paul shipper as compared with the Des Moines shipper, and the basis of rates from St. Paul and Minneapolis to points reached directly from them will be relatively lower than the basis of rates from Des Moines. Comparing Chicago with Des Moines (and the Chicago comparison seems to be the most frequently made by complainant): As long as Chicago is the gateway for commerce, which it is to-day, both through the lakes and via the railroads centering in Chicago, and as long as the rates from Chicago to points in this territory are affected and controlled as a result of competition between the railroads by the rates through Duluth gateway, its rates will necessarily remain relatively lower than the rates from Des Moines, which does not possess these advantages; and to a lesser degree this is equally true of La Crosse and Winona and the Mississippi River points, to which complainant's argument so frequently refers.

Complainant then quotes again from brief of defendants:

We concede that, speaking generally, the rates from Des Moines to Minnesota and South Dakota points are relatively higher than from these other points—that is to say, on a higher mileage basis (this is not true of St. Paul, Minneapolis, or Omaha)—though in almost all cases the Des Moines rates are, in fact, lower than rates from these other points.

We contend that the relatively higher rates are justified by existing and controlling conditions and that Des Moines is not entitled to the same mileage basis of rates, relatively, as these other points.

As already stated, the rates from Chicago to South Dakota and Minnesota points are relatively lower than the rates from Des Moines, though higher in fact.

Summing up the situation, therefore, briefly, it is this: The Des Moines rates to the points in controversy are lower in fact than the Chicago rates, but relatively higher; to the greater part of the South Dakota points on the North Western lines the Des Moines rates are lower than the Mississippi River rates, but are the same as the Mississippi River rates to more distant points in northern and western parts of South Dakota; to all Minnesota points on the North Western road the Des Moines rates are lower than the Chicago rates in fact, though relatively higher; to points west of Mankato the Des Moines rates are lower than the Mississippi River rates, but to points between Winona and Mankato the Des Moines rates are higher than the Mississippi River rates. Owing to the application of the St. Paul rates from La Crosse and Winona, the rates from these points are in some cases lower than the Des Moines rates, dependent upon the point of destination and the St. Paul rate to that point. The St. Paul and Minneapolis rates to Minnesota points are higher or lower than the Des Moines rates, dependent upon the distance, though, generally speaking, the relative basis of rates from St. Paul and Minneapolis to Minnesota and South Dakota points is about the same as the Des Moines basis of rates.

Complainant, by its attorney, in the argument of the case before the full Commission, was asked by one of the Commissioners:

On what basis do you claim they should be constructed?

He replied:

The basis on which we claim they should be constructed is a basis that is relatively the same for Des Moines as it is for these competitive points. Now, of course, we know that to say that in absolute figures is a pretty difficult thing.

The complainant insists that the present rate adjustment from Chicago and the Mississippi River crossings to the territory in question

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should be set aside by this Commission in this one case and another adjustment substituted which it admits would be a thing difficult to state in figures. The Commission and the country generally are familiar with the present system, which is substantially as follows: The three great gateways for traffic moving into the territory in question are the Duluth gateway on the north, which controls the St. Paul and Minneapolis basis of rates, and the Chicago and St. Louis gateways. The rates on traffic from the east to Missouri River points are controlled and fixed by the rates through the St. Louis gateway; while rates from Chicago to points in this territory are fixed and controlled both by the rates through the Duluth gateway and the St. Louis gateway. The rail and lake rates through the Duluth gateway to St. Paul and Minneapolis and the lines of railway leading therefrom furnish those cities with direct routes reaching most of the points in controversy. Chicago has many lines of railroad extending into this territory in competition with lines from St. Paul and Minneapolis. The result is that the Chicago lines make rates from Chicago on the basis of the rates made by the St. Paul and Minneapolis lines, just as they make rates from Chicago to St. Paul, to meet competition through the Duluth gateway. The rates from Chicago through Winona and La Crosse to Minnesota and South Dakota points are generally the same as the St. Paul and Minnesota rates, and rates from Chicago to Sioux Falls and South Dakota points are made to meet rates from Duluth, St. Paul, and Minneapolis. St. Louis is the terminus of eastern lines which reach the Mississippi River, and its water competition afforded by the Mississippi River affects the basis of rates into this territory. There is an established basis of rates between Chicago and St. Louis and St. Paul by which the St. Louis rate is but little higher than the Chicago rate (105 per cent). The effect of the St. Louis-St. Paul rate is felt at all points on the Mississippi River as far north as Dubuque, Iowa. The upper Mississippi River crossings from Quincy, Ill., to Dubuque have rates made in line with the Chicago-St. Louis adjustment on traffic into the territory involved. La Crosse and Winona are gateways through which the Chicago traffic in western Minnesota and the Dakotas is handled over the Chicago & North Western, and the Chicago, Milwaukee & St. Paul. This rate adjustment has been in effect substantially on this present basis for more than thirty years. There have been certain minor changes in rates from time to time, but the general structure has not been changed.

The language of this Commission in the case of *Fort Dodge Commercial Club of Fort Dodge, Iowa, v. I. C. R. R. Co.*, 16 I. C. C. Rep., 581, is peculiarly applicable to this case. It is as follows:

The great weight of complainant's testimony is directed against the reasonableness of the rates considered from the standpoint of distance or mileage. Its exhibits of 18 I. C. C. Rep.

comparative distances and the higher rates per car per mile resolve themselves into that alone. Unquestionably mileage is a factor in the determination of the reasonableness of rates, but how important, or what effect it should have in judging the fairness of a challenged rate is a question which must be answered in the light of all the facts surrounding the exaction of the rate. Early after its organization the Commission held that it was not the purpose of the act to compel the establishment of rates solely according to mileage, and that the public benefits, the greater volume of business to carriers warranting lower rates to all, the force of competition, and many other potent considerations might far outweigh a claim of right founded only on geographic location.

On March 23, 1889, this Commission, in the case of a complaint against a group rate for a particular district, wherein the distances between different shippers to destination was over 40 miles, and all such shippers were allowed equal rates regardless of distance, said (*Imperial Coal Co. v. P. & L. E. R. R. Co.*, 2 I. C. C. Rep., 638):

This raises the question of mileage rates upon which the Commission has had other occasions to express its views. The Commission has said that it was not the intention of the act to regulate commerce to establish equal mileage rates; that they are not compulsory, nor always politic; that one effect of such rates would be to put an end to competition, as a factor, in making rates, and that it would work a revolution in the business of the country, which, though it might be beneficial in some instances, would be destructive in others.

Chairman Cooley, in concurring, said:

The question then remains whether there is unjust discrimination in giving to the miners, who are at a somewhat greater distance from the common market, equal rates with complainants. Upon this it is to be said that it is now practically conceded on all hands that rates measured strictly by distance can not at all times be made without serious detriment to business interests in many sections, perhaps in all. It is not possible to establish equal mileage rates without great curtailment of competition, nor without ruining some carriers and many business interests. A great many considerations have weight in the making of rates, and while relative distance is important, it is not always controlling. This is recognized in the act to regulate commerce, and in rate sheets everywhere.

(In this, Commissioner Morrison concurred.)

In *Wilhoit v. M., K. & T. Ry. Co.*, 12 I. C. C. Rep., 160, this Commission said:

Distance is something of a factor in the determination of the reasonableness or unreasonableness of a rate, but to permit it to be a sole or controlling factor would be to introduce discrimination, which would create chaotic commercial conditions under which irreparable injury would be done to individuals, firms, and communities without any compensating good resulting to the people or the commerce of the country as a whole.

In *Kansas City Transportation Bureau of the Commercial Club v. A., T. & S. F. Ry. Co.*, 16 I. C. C. Rep., 195, the complaint was against the then present relationship of rates as between Kansas City and Omaha as discriminating against Kansas City and in favor of Omaha, and the prayer was that the relative adjustment of such rates

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might be changed. The Commission said, referring to the mileage question:

If that principle of rate making were adopted here it would necessarily be followed in other places and eventually to other traffic, and while we are not to be understood as intimating that substantial differences in distance are not to be given consideration we are not willing to accept the theory of rate construction based purely on distances. Such adjustment would be revolutionary and destructive to established commercial interests of enormous volume and value.

This is a complaint by the Greater Des Moines Committee (Incorporated), located in the city of Des Moines, the largest city in Iowa, which controls the trade of a large territory about it. Its location, however, is not such as to differentiate it materially from a number of other interior Iowa points when outbound rates are drawn into consideration. It is served by seven railroads, five of which reach it by means of branch lines. A number of these roads reach the territory in question by roundabout routes. Shippers from Des Moines meet competition in the territory involved in addition to the points named in the complaint, from shippers from Omaha, Nebr., Sioux City, Council Bluffs, various points in Minnesota and the Dakotas, St. Paul, and Minneapolis. The interests of these localities were not represented at the hearing, and the railroads which serve some of these points by direct lines and by their connections do not reach Des Moines and are not parties to the proceeding.

This Commission, in passing upon so important a matter, is bound to consider the whole field when such a general rate adjustment is undertaken as is sought to be made by the complainant, and must carefully consider what would probably be the effect upon other points not involved in the specific complaint under consideration. There was before the Commission nothing to show that the conditions and circumstances affecting the transportation from Des Moines to the points in question were the same as those at Chicago and St. Louis and the Mississippi River crossings, of which complaint is made. Complainant made no such contention.

Upon full consideration, after taking into account all the facts and circumstances which have been brought before the Commission, our conclusions are that the complaint has not been sustained and that there have not been shown facts sufficient to justify this Commission in ordering a change in the present rate adjustment and attempting to establish a new rate adjustment which would be in consonance with the basis sought by the complainant.

At the time the complaint was filed rates from Des Moines to Dakota points established by the Chicago, Milwaukee & St. Paul were the Mississippi River rates. This resulted in the application of higher rates via this line to a number of points than those maintained by

other lines to the same points. Since the hearing the Chicago, Milwaukee & St. Paul has filed a tariff which makes applicable to Dakota points the Iowa distance tariff rates to Sioux City plus the Dakota distance tariff rates beyond. This is the manner in which rates are made now by all lines from Des Moines to Dakota points. This adjustment is also applied to shipments from Omaha and Council Bluffs. It is not charged by complainant that this adjustment of rates from Des Moines to Dakota points results in unreasonable charges. It appears that the same basis is applicable from other interior Iowa points. As between Des Moines and these points there is no discrimination alleged or shown.

In the numerous exhibits and briefs of the complainant there appeared certain things which were not the result of the Chicago or Mississippi River rate adjustment complained of. There appeared to be a marked difference in rates based only on mileage at points near the lines between Iowa, Minnesota, and South Dakota. The defendants claim that these jumps in rates resulted from the application of the Iowa Distance Tariff from Des Moines to the state line and the Iowa-Minnesota Distance Tariff to points beyond, and that some jumps in rates at state lines would necessarily occur or state lines would become breaking points and state rates be controlling. They admitted, however, that some of the jumps did not seem justifiable. No evidence was presented showing the circumstances and conditions prevailing at the points named which would justify the Commission in passing upon the reasonableness or discriminatory character of such rates. Now that the attention of the defendants has been called to this marked difference in rates they will be expected to make the necessary readjustment of such rates as will make them reasonable and just, nondiscriminatory, nonprejudicial, and nonpreferential. It also appeared that some combinations of local rates from Des Moines to Dakota points were less than the through rates to the same points, and it is well settled that such an adjustment is *prima facie* unreasonable, and the defendants will be expected to make the necessary readjustment. If the defendants fail, neglect, or refuse so to do the complainant can file its formal complaint specifying the rates complained of, and prompt consideration will be given thereto.

The complaint will be dismissed.

LANE, *Commissioner*, dissenting:

I can not agree with the conclusion reached by the Commission for two reasons:

First, I hold that we should not dismiss a complaint because a complainant has not "made out a case." The burden of proving his case is not upon the complainant when a proceeding is brought before this

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Commission. After complaint is made the burden is on the Commission of making such investigation as may be necessary in the public interest to discover whether the rates complained of are or are not unreasonable or discriminatory or otherwise in violation of the act which it is our duty to enforce. All that the law exacts as to the parties is that we shall give them a full hearing, but after the complainant has said all that he may desire and the carriers have made such defense as they think advisable the duty still rests upon the Commission to make an investigation that will satisfy it as a public body whether the carriers are acting as the law requires. This view of the law I have before expressed, and I can not yield the conviction that a case should not be dismissed because a complainant does not establish a case or present such evidence as will sustain his contention.

Second, Examination into previous complaints brought before this Commission by the Greater Des Moines Committee satisfies me that the rate adjustment between the cities in the territory between the Mississippi and Missouri rivers and the cities of Chicago, St. Louis, Kansas City, and Omaha and similarly situated points is not fair. And I am convinced that there will be no harmony between the carriers and shippers in Iowa and west thereof until some system similar to that prevailing in Official Classification territory is adopted. Now that discriminations between individuals are very largely destroyed, the problem before the Commission is to investigate and if possible destroy discriminations between places.

It is a matter worthy of notice that so very slight a percentage of our complaints comes from territory between Chicago and New York. This is due largely to the fact—at least railroad traffic officials have so stated—that years ago the carriers in this section of our country saw fit to group various portions of this territory and base their rates upon a percentage of the New York-Chicago rate. The Greater Des Moines Committee is here alleging discrimination and is suggesting, for the help of the Commission in the solution of this problem, that a similar percentage and grouping system be extended into the territory west of Chicago.

It is no answer to this complainant to say that the interests of other cities must be considered. Most assuredly they should be given the most careful consideration. But we have not hesitated to right a wrong which we found, or attempted to do so, because similar wrongs existed as to other cities. See *Burnham-Hanna-Munger Dry Goods Co. v. C., R. I. & P. Ry. Co.*, 14 I. C. C. Rep., 299. When we find one city discriminated against it becomes primarily the duty of the carriers to forthwith adjust their rates so as to extend in good faith the purport of that finding to all other places affected thereby. Moreover, if to do justice to Des Moines and not effect discrimination,



even for a time, against all other places in Iowa or along either bordering river it becomes necessary to broaden our inquiry so as to include other points, we have in my construction of the law the power to do so. It is my judgment that similar complaints will continue to come before this Commission from this territory until the whole situation is dealt with and a rate relationship devised and established that will be more equitable to the interior points in Iowa as against their competitors than that now obtaining, and for this reason I favor the retention of this complaint as a basis for an exhaustive investigation that will lead to an effective order.

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No. 1227.

J. W. THOMPSON LUMBER COMPANY ET AL.  
v.  
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

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*Submitted February 4, 1910. Decided March 7, 1910.*

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Reparation awarded on shipments of hardwood lumber from Memphis, Tenn., to New Orleans, La., on the basis of the original report of the Commission in this case, 13 I. C. C. Rep., 657.

*W. A. Percy and Morgan H. Beach* for complainants.  
*Charles N. Burch* for defendants.

SUPPLEMENTAL REPORT OF THE COMMISSION.

*LANE, Commissioner:*

The original complaint in this case was filed June 20, 1907, and attacked the rate of 12 cents per 100 pounds on hardwood lumber from Memphis, Tenn., to New Orleans, La. In its report of June 1, 1908, 13 I. C. C. Rep., 657, the Commission found and so held that the 12-cent rate was unjust and unreasonable, and that 10 cents per 100 pounds should be established as the maximum rate between the points mentioned via the lines of the two defendant carriers. At that time the subject of reparation was reserved for consideration at a later date, it being stated, however, that no award of damages would be made in this case for shipments prior to the date of the filing of the original complaint, because the record did not conclusively disclose that the rate was unreasonable prior to such date. An amended petition praying for reparation was filed February 6, 1909, and at a hearing thereon proof was made of shipments moving after the date of the filing of the original complaint. In the case of each claim incorporated in the amended petition the witnesses testified that the freight charge had been paid by the party complainant, except in the case of two cars, and for these two cars an assignment of the claim dated subsequent to the original report and order in the case was filed. A representative of the carriers was present at the hearing and checked each claim as presented with the records 18 I. C. C. Rep.

of the carriers, and wherever there was a conflict of data as to a particular movement it was thoroughly investigated, after which the fact of the movement was either accepted by the carriers or abandoned by the shipper in the record. Therefore, the record in its present form contains claims for reparation upon only such shipments as have been carefully checked and found to agree with the records of the carriers.

With the consent of the defendants intervening petitions were received at the hearing on behalf of the McLean Hardwood Lumber Company and James E. Starke & Company.

Under all the circumstances, the Commission is of the opinion and so holds that the rate of 12 cents on this traffic was unjust and unreasonable from the date of the filing of the original complaint, and reparation will be awarded on the basis of the rate of 10 cents per 100 pounds on the shipments concerning which proof has been made in this case, all of which moved after the date of the filing of the original complaint. An order will be issued in accordance with the foregoing findings. The names of the complainants and specific data with regard to shipments upon which reparation is awarded are as follows:

J. W. Thompson Lumber Company is awarded reparation from the Yazoo & Mississippi Valley Railroad Company on 28 carloads of lumber, shipped from Memphis, Tenn., to New Orleans, La., between June 20, 1907, and August 17, 1908, inclusive. The aggregate weight of these shipments was 1,451,600 pounds, and charges were collected at the rate of 12 cents per 100 pounds. We are of opinion and find that the charge of 12 cents per 100 pounds was unreasonable to the extent that it exceeded 10 cents per 100 pounds, and that complainant is entitled to reparation from this defendant in the sum of \$290.32, with interest.

J. W. Thompson Lumber Company is awarded reparation from the Illinois Central Railroad Company on 1 carload of lumber, shipped from Memphis, Tenn., to New Orleans, La., between June 20, 1907, and March 17, 1908, inclusive. The aggregate weight of this shipment was 67,500 pounds, and charges were collected at the rate of 12 cents per 100 pounds. We are of opinion and find that the charge of 12 cents per 100 pounds was unreasonable to the extent that it exceeded 10 cents per 100 pounds, and that complainant is entitled to reparation from this defendant in the sum of \$13.50, with interest.

Russe & Burgess are awarded reparation from the Yazoo & Mississippi Valley Railroad Company on 204 carloads of lumber, shipped from Memphis, Tenn., to New Orleans, La., between June 24, 1907, and July 29, 1908, inclusive. The aggregate weight of these shipments was 11,001,350 pounds, and charges were collected at the rate of 12 cents per 100 pounds. We are of opinion and find that the

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charge of 12 cents per 100 pounds was unreasonable to the extent that it exceeded 10 cents per 100 pounds, and that complainant is entitled to reparation from this defendant in the sum of \$2,200.27, with interest.

Russe & Burgess are awarded reparation from the Illinois Central Railroad Company on 10 carloads of lumber, shipped from Memphis, Tenn., to New Orleans, La., between June 24, 1907, and July 29, 1908, inclusive. The aggregate weight of these shipments was 539,200 pounds, and charges were collected at the rate of 12 cents per 100 pounds. We are of opinion and find that the charge of 12 cents per 100 pounds was unreasonable to the extent that it exceeded 10 cents per 100 pounds, and that complainant is entitled to reparation from this defendant in the sum of \$107.84, with interest.

The Darnell-Taenzer Lumber Company is awarded reparation from the Yazoo & Mississippi Valley Railroad Company on 166 carloads of lumber, shipped from Memphis, Tenn., to New Orleans, La., between June 20, 1907, and August 1, 1908, inclusive. The aggregate weight of these shipments was 7,421,600 pounds, and charges were collected at the rate of 12 cents per 100 pounds. We are of opinion and find that the charge of 12 cents per 100 pounds was unreasonable to the extent that it exceeded 10 cents per 100 pounds, and that complainant is entitled to reparation from this defendant in the sum of \$1,484.32, with interest.

The Darnell-Taenzer Lumber Company is awarded reparation from the Illinois Central Railroad Company on 12 carloads of lumber, shipped from Memphis, Tenn., to New Orleans, La., between June 20, 1907, and August 1, 1908, inclusive. The aggregate weight of these shipments was 532,200 pounds, and charges were collected at the rate of 12 cents per 100 pounds. We are of opinion and find that the charge of 12 cents per 100 pounds was unreasonable to the extent that it exceeded 10 cents per 100 pounds, and that complainant is entitled to reparation from this defendant in the sum of \$106.44, with interest.

The Green River Lumber Company is awarded reparation from the Yazoo & Mississippi Valley Railroad Company on 32 carloads of lumber, shipped from Memphis, Tenn., to New Orleans, La., between July 3, 1907, and July 30, 1908, inclusive. The aggregate weight of these shipments was 1,481,800 pounds, and charges were collected at the rate of 12 cents per 100 pounds. We are of opinion and find that the charge of 12 cents per 100 pounds was unreasonable to the extent that it exceeded 10 cents per 100 pounds, and that complainant is entitled to reparation from this defendant in the sum of \$296.36, with interest.

The Green River Lumber Company is awarded reparation from the Illinois Central Railroad Company on 2 carloads of lumber, shipped

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from Memphis, Tenn., to New Orleans, La., between July 3, 1907, and July 30, 1908, inclusive. The aggregate weight of these shipments was 91,800 pounds, and charges were collected at the rate of 12 cents per 100 pounds. We are of opinion and find that the charge of 12 cents per 100 pounds was unreasonable to the extent that it exceeded 10 cents per 100 pounds, and that complainant is entitled to reparation from this defendant in the sum of \$18.36, with interest.

The Bellgrade Lumber Company is awarded reparation from the Yazoo & Mississippi Valley Railroad Company on 3 carloads of lumber, shipped from Memphis, Tenn., to New Orleans, La., between April 9, 1907, and June 19, 1908, inclusive. The aggregate weight of these shipments was 140,000 pounds, and charges were collected at the rate of 12 cents per 100 pounds. We are of opinion and find that the charge of 12 cents per 100 pounds was unreasonable to the extent that it exceeded 10 cents per 100 pounds, and that complainant is entitled to reparation from this defendant in the sum of \$28, with interest.

The Chickasaw Cooperage Company is awarded reparation from the Yazoo & Mississippi Valley Railroad Company on 25 carloads of lumber, shipped from Memphis, Tenn., to New Orleans, La., between September 13, 1907, and June 27, 1908, inclusive. The aggregate weight of these shipments was 1,223,300 pounds, and charges were collected at the rate of 12 cents per 100 pounds. We are of opinion and find that the charge of 12 cents per 100 pounds was unreasonable to the extent that it exceeded 10 cents per 100 pounds, and that complainant is entitled to reparation from this defendant in the sum of \$244.66, with interest.

The Chickasaw Cooperage Company is awarded reparation from the Illinois Central Railroad Company on 4 carloads of lumber, shipped from Memphis, Tenn., to New Orleans, La., between September 13, 1907, and June 27, 1908, inclusive. The aggregate weight of these shipments was 183,500 pounds, and charges were collected at the rate of 12 cents per 100 pounds. We are of opinion and find that the charge of 12 cents per 100 pounds was unreasonable to the extent that it exceeded 10 cents per 100 pounds, and that complainant is entitled to reparation from this defendant in the sum of \$36.70, with interest.

The McLean Hardwood Lumber Company is awarded reparation from the Yazoo & Mississippi Valley Railroad Company on 19 carloads of lumber, shipped from Memphis, Tenn., to New Orleans, La., between October 23, 1907, and July 24, 1908, inclusive. The aggregate weight of these shipments was 831,300 pounds, and charges were collected at the rate of 12 cents per 100 pounds. We are of opinion and find that the charge of 12 cents per 100 pounds was

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unreasonable to the extent that it exceeded 10 cents per 100 pounds, and that complainant is entitled to reparation from this defendant in the sum of \$166.26, with interest.

James E. Starke & Company are awarded reparation from the Yazoo & Mississippi Valley Railroad Company on 3 carloads of lumber, shipped from Memphis, Tenn., to New Orleans, La., between November 21, 1907, and June 29, 1908, inclusive. The aggregate weight of these shipments was 153,700 pounds, and charges were collected at the rate of 12 cents per 100 pounds. We are of opinion and find that the charge of 12 cents per 100 pounds was unreasonable to the extent that it exceeded 10 cents per 100 pounds, and that complainant is entitled to reparation from this defendant in the sum of \$30.74, with interest.

James E. Starke & Company are awarded reparation from the Illinois Central Railroad Company and the Yazoo & Mississippi Valley Railroad Company on 1 carload of lumber, shipped from Memphis, Tenn., to New Orleans, La., on January 30, 1908. The aggregate weight of this shipment was 49,900 pounds, and charges were collected at the rate of 12 cents per 100 pounds. We are of opinion and find that the charge of 12 cents per 100 pounds was unreasonable to the extent that it exceeded 10 cents per 100 pounds, and that complainant is entitled to reparation from these defendants in the sum of \$9.98, with interest.

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No. 2353.  
**RAINEY & ROGERS**  
*v.*  
**ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.**

*Submitted December 15, 1909. Decided March 14, 1910.*

Rate on coal from the Carbon Hill district, Ala., to New Albany, Miss., of \$1.10 per ton, found to be unreasonable in so far as it exceeds 95 cents per ton, which rate is prescribed for the future.

*C. Lee Crum* for complainant.

*E. B. Peirce* and *T. W. Parker* for defendant.

**REPORT OF THE COMMISSION.**

**KNAPP, Chairman:**

Complainant attacks the carload rate of \$1.10 per ton on coal from the Carbon Hill group of mines, in Alabama, to New Albany, Miss., as being unjust and unreasonable. New Albany has a population of about 2,800 and is on the line of defendant between Birmingham, Ala., and Memphis, Tenn. Complainant is a consumer of coal at New Albany, operating several manufacturing plants. The total movement of coal into New Albany is approximately 200 carloads per annum, and a large part of it comes over the rails of defendant from the Carbon Hill mines. Coal can be purchased for 75 cents per ton at the mines and is generally used for domestic purposes in New Albany.

The distance from Carbon Hill via the line of the defendant to New Albany is 113 miles, and complainant avers that as a rate of 80 cents per ton is charged to Tupelo, Miss., a point on the line of defendant 26 miles nearer the mines, it is a discrimination against New Albany to charge a rate so much higher for the short additional haul to New Albany. The rate to Tupelo has been advanced to 95 cents since the filing of this complaint, April 13, 1909, but it was stated at the hearing by counsel for defendant that the carrier had found it necessary to again change the rate to Tupelo, and that a rate of 85 cents would be established to that point. Discrimination against New Albany is further alleged in the relation of rates from the same point of origin over the same line to Memphis, Tenn., a point 191 miles from Carbon Hill, and 79 miles farther distant therefrom than

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New Albany. Coal moving from Carbon Hill to Memphis passes through New Albany and the rate is \$1 per ton. Approximately 2,000 carloads of coal a year move over the line of defendant from Carbon Hill to Memphis. A number of similar comparisons were made. Complainant contends that these comparisons disclose that a maximum reasonable rate to be applied at New Albany would be 80 cents per ton.

The defense of the carrier is that competitive conditions enter into the rates to the points used in the comparisons. At Tupelo it has to meet competition from the mines available to that market through the Mobile & Ohio Railroad in connection with the Southern Railway and other carriers. At Memphis there is competition from the mines of West Virginia, Ohio, Illinois, and Kentucky, from which coal moves into Memphis over the Ohio and Mississippi rivers. There is also competition at Memphis from rail carriers.

We have given due consideration to the arguments of complainant based upon the discrimination against New Albany and the claim of defendant that competitive conditions at the points specified by complainant compel the lower rates to such points.

Competitive conditions, when shown to exist, may justify the fixing of rates which are not in line with the rates to points where such competition does not obtain. When such competition is proven, circumstances and conditions are then so dissimilar as to largely negative the force and effect of comparisons which have not given proper weight to the difference in prevailing conditions. In this case New Albany is practically a local point for this traffic, and the reasonableness of rates to such a point must be determined from factors which do not rest upon comparisons with points where conditions are substantially dissimilar.

We have examined into the reasonableness of this rate on its own merits, in order that a conclusion could be reached independently of the comparisons referred to. The reports of earnings filed with the Commission by the principal carriers engaged in coal traffic in the southern coal field, including the defendant, give the following:

Name of road.	Average receipts per ton per mile—all freight.	Revenue per ton per mile—bituminous coal, carloads.
	<i>Cents.</i>	<i>Cents.</i>
St. Louis & San Francisco R. R. Co.....	0.979	0.570
Southern Ry. Co.....	.962	.596
Louisville & Nashville R. R. Co.....	.763	.509
Central of Georgia Ry. Co.....	1.079	.514
Northern Alabama Ry. Co.....	.699	.684
Mobile & Ohio R. R. Co.....	.621	.498

\* Based on tonnage which included less than carload freight, if any.



For the comparatively short haul from Carbon Hill to New Albany of 113 miles the carrier is probably entitled to earn a greater per-ton-per-mile revenue than its average for its entire coal movement, which was 5.7 mills for the year ending June 30, 1909, but it should not be as great as 9.7 mills, the yield at \$1.10 per ton. It is fair also to compare the earnings from coal with the earnings from all freight, which was 9.79 mills over defendant's lines for the past year. This comparison shows a high return for such a low-grade commodity as bituminous coal.

The defendant's coal-car equipment return to the Commission for the year 1909 shows that out of a total of 8,911 coal cars 3,616 were 40-ton cars, and 3,393 were 50-ton cars. The car earnings on a 40-ton car would be at least \$44 for the one-line haul of 113 miles, and for the 50-ton car at least \$55, which seems excessive for a commodity of this character, which can move in almost any kind of a car.

Complainant's witness testified that fuel was the most important factor in the manufacture of ice, and that the low rates on coal enjoyed by the manufacturers at Memphis and Tupelo place him at a disadvantage in the sale of ice at such competitive points as Pontotoc and Houston, Miss.

After giving due consideration to all the facts shown in this record, to the calculations given above made from the reports of the carriers, and to the general conditions surrounding the transportation of bituminous coal, the Commission is of the opinion, and so holds, that the rate of \$1.10 now in effect via the St. Louis & San Francisco Railroad on coal from the Carbon Hill, Ala., district to New Albany, Miss., is unjust and unreasonable, and that a carload rate of 95 cents per ton should be established as a maximum between the points mentioned via the line of defendant carrier. This rate will yield a per-ton-per-mile revenue of over 8 mills, and per-car earnings of \$38 for 40-ton cars and \$47.50 for 50-ton cars.

The complaint contains a general prayer for reparation, but under the circumstances of this case no reparation will be awarded.

An order will be issued in accordance with the foregoing conclusions.

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No. 2722.  
WABASH COATING MILLS  
v.  
WABASH RAILROAD COMPANY ET AL.

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*Submitted January 7, 1910. Decided March 14, 1910*

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Award of reparation denied on various shipments of wood-pulp board from Wabash, Ind., to St. Louis, Mo.

*James Todd* for complainant.

*N. S. Brown* for Wabash Railroad Company.

REPORT OF THE COMMISSION.

*KNAPP, Chairman:*

For a considerable period prior to February 10, 1909, defendants maintained a rate of 11½ cents per 100 pounds on wood-pulp board from Wabash, Ind., to St. Louis, Mo., but on that date reduced this rate to 9 cents. Between October 25 and December 7, 1907, more than fourteen months before the reduction, complainant shipped four carloads of this commodity upon which the 11½-cent rate was applied. It is alleged that the rate collected on these shipments was unjust and unreasonable because of the subsequent reduction, and reparation is asked in the sum of \$34.28, based upon the 9-cent rate. The defendant Wabash Railroad Company admits the facts alleged and indicates its willingness to make the refund. The Commission has repeatedly held that the voluntary reduction of a rate does not of itself, and without other supporting facts and circumstances, warrant the inference that the former rate was unreasonable, and this principle applies although the carrier, as in this case, is willing to refund to the shipper making complaint but does not admit that the rate charged was unreasonable. Aside from the fact that this rate was reduced nothing has been shown to justify a finding that the 11½-cent rate was unreasonable at the time of the shipments in question. The complaint should be dismissed, and it will be so ordered.

18 I. C. C. Rep.

No. 2873.

P. P. DONAHUE

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COM-  
PANY ET AL.

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*Submitted February 18, 1910. Decided March 14, 1910.*

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Reparation for misrouting where shipper gives instructions to forward the goods via the route taken, denied.

*George A. Schroeder* for complainant.

*William Ellis* and *F. G. Wright* for Chicago, Milwaukee & St. Paul Railway Company.

#### REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

Complainant shipped a carload of corn from Dawson, Iowa, to Trevor, Wis., which the shipper routed via Waukesha, Wis. The rate assessed was an alleged combination of locals of 17.6 cents per 100 pounds, which the complainant claims is excessive and unreasonable. We are unable to verify this rate, but find that the proper rate via this route was 18.6 cents. The combination is 12.6 cents from Dawson to Waukesha plus a rate of 6 cents from that point to Trevor. There was in effect at the time this shipment moved a joint rate from Dawson to Trevor via Chicago of 12.6 cents.

From Dawson to Trevor via Waukesha the distance is 405 miles, while via Chicago the distance is 401 miles. When the shipments move via Chicago the cars are delivered to the Wisconsin Central, now the Soo Line, at Franklin Park, where the exchange track between the Soo Line and the Chicago, Milwaukee & St. Paul Railway is located. The defendants stated that on shipments between points named which moved via Waukesha there would be several transfers of the car, whereas if it moved via Chicago the car would be subject

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to but one transfer, namely, at Franklin Park. No testimony was introduced to show that the rate via Waukesha was unreasonable, except that the rate via Chicago was much lower for practically the same distance. This case is governed by *Poor Grain Co. v. C., B. & Q. Ry. Co.*, 12 I. C. C. Rep., 469, in which the Commission held that where a shipper gives instructions to forward his goods via a particular route the carrier is relieved of the duty of ascertaining whether the goods could be forwarded via another route at a lower rate.

The complaint will be dismissed, and carriers should collect the undercharge of 1 cent per 100 pounds. An order will be entered accordingly.

18 I. C. C. Rep.

No. 2529.

E. T. BARNUM IRON WORKS

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAIL-  
WAY COMPANY ET AL.

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*Submitted October 15, 1909. Decided March 14, 1910.*

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Claim is for reparation based upon increase in minimum carload weight. There being no evidence of anything unreasonable in such increase, the complaint is dismissed.

*Benjamin E. Barnum* for complainant.

*O. E. Butterfield* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

*S. H. West, Roy F. Britton, and R. C. Fyfe* for St. Louis Southwestern Railway Company.

*F. C. Dillard and Baker, Botts, Parker & Garwood* for Houston & Texas Central Railroad Company and Galveston, Harrisburg & San Antonio Railway Company.

*Hawkins & Franklin* for El Paso & Southwestern Railroad Company.

#### REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This case involves reparation only and is based entirely upon the fact that prior to November 1, 1908, the minimum weight on iron fences in carloads was 30,000 pounds on shipments from Brighton, Ohio, to Tombstone, Ariz., and that effective November 1, 1908, the minimum weight was raised to 36,000 pounds. The legal rate applicable to carload shipments of this commodity, both before and after November 1, 1908, was \$1.94 per 100 pounds. Complainant asks that reparation be awarded it in the sum of \$116.40.

The facts, as developed at the hearing and as agreed upon by stipulation of the parties, are as follows:

In June, 1908, complainant submitted a bid to furnish a certain iron fence in Tombstone, Ariz., the bid being based upon the through freight rate of \$1.94 per 100 pounds and the minimum carload weight

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of 30,000 pounds then in effect. This bid was not accepted until September, 1908. The fence was made by a subcontractor at Brighton, Ohio, some delay occurring in its manufacture, and was shipped under the direction of the complainant, November 17, 1908. The shipment weighed approximately 24,000 pounds. When the expense bill was rendered, the rate of \$1.94 per 100 pounds, based upon the carload minimum of 36,000 pounds then in effect, was charged and \$698.40 collected. At the hearing no evidence was given, nor any complaint made, that the carload minimum was unreasonable, nor was any complaint made or evidence introduced to show that the rate itself was unreasonable or discriminatory.

The basis for reparation was very succinctly put at the hearing by the representative of the complainant, who said that the claim was based upon "the fact that the weight was raised from 30,000 to 36,000 pounds without our knowledge." The fact that complainant contracted to furnish material under the former minimum and of his ignorance as to the subsequent lawfully established change therein do not, in the absence of any showing that the rate or minimum in effect on the date of the shipment was unreasonable, afford any lawful basis for reparation. The case should therefore be dismissed, and it will be so ordered.

18 I. C. C. Rep.

No. 1709.

GREATER DES MOINES COMMITTEE

v.

CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

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*Submitted March 13, 1909. Decided February 8, 1910.*

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Complaint, not sustained by the facts presented, is dismissed.

*Guernsey, Parker & Müller* for complainant.

*A. G. Briggs* and *George W. Markham* for defendants.

REPORT OF THE COMMISSION.

**COCKRELL, Commissioner:**

The complaint in this case was filed August 29, 1908, and is contained in a printed pamphlet. The complaint states that the complainant is a corporation under the laws of Iowa and that the city of Des Moines is the largest and commercially the most important city in the state and is located approximately in the geographical center of the state and of the territory bounded by the Mississippi and Missouri rivers on the east and west, respectively, and between St. Paul and Minneapolis on the north, and St. Louis, Kansas City, and St. Joseph on the south; that by reason of its location its merchants and manufacturers are competitors of the merchants and manufacturers in business upon and in the vicinity of the Mississippi River from St. Paul and Minneapolis to St. Louis and of the merchants of St. Joseph and Kansas City for trade in the territory lying south and west of Des Moines, including both the territory on the east and west of the Missouri River; that large amounts of merchandise, manufactured products, and other commodities sold by the merchants and manufacturers of the said cities in competitive trade are transported for the whole or a part of the distances to the competitive destinations over the railroad of defendants; that defendants have filed and

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published, as applicable to such traffic, sundry tariffs of rates; that the rates therein specified are used in making through rates from Des Moines to many points west of the Missouri River, certain of the rates to such points being made up of the rates from Des Moines to the Missouri River and from the Missouri River to the point of destination; that the rates therein prescribed are neither just nor reasonable, but are unjust and unreasonable and are excessive and unlawful, and unlawful in that they operate as an unreasonable preference or advantage to the cities located upon or taking the Mississippi River rates and the cities located upon and taking the Missouri River rates as against Des Moines and subject Des Moines to undue and unreasonable prejudice or disadvantage; that the basis of the rates of the defendants between other points of commercial importance on its lines and St. Joseph is, as complainant believes, without exception, less than the basis of the said rates applying to Des Moines; that the rates of the defendants for services between Des Moines and St. Joseph and intermediate points are relatively higher than the rates voluntarily established and maintained for a long time by defendants for like service under like conditions to other communities; that the rates of the defendants from Des Moines to points north of St. Joseph are relatively higher than the rates complained of between Des Moines and St. Joseph, and are relatively higher than the rates between the points north of St. Joseph and St. Joseph and other points competitive with Des Moines; that the rates from Des Moines to points on defendants' lines south of Iowa-Missouri state line are not graduated with reference to the service rendered, but are arbitrarily established upon an unlawful basis intended to discriminate and, in fact, discriminating against Des Moines and its inhabitants; that the rates established by the defendants between the city of Des Moines and the city of St. Joseph and other cities and towns in Missouri are in excess of rates fixed for like and contemporaneous service under similar conditions by the tariffs of the Chicago, Rock Island & Pacific, Wabash system, Chicago, Burlington & Quincy, Missouri Pacific, and Western Trunk Lines.

The complainant prays that an order may be made commanding the defendants to desist from said violations of the act to regulate commerce, and that they be required to put into force between Des Moines and points upon their lines south and west of the city of Des Moines just and reasonable rates which shall not discriminate against Des Moines and its citizens, and which shall not grant to any other persons or localities undue preference or advantage; and for such further orders as the Commission may deem necessary. No reparation was asked.



The defendants in answer to the complaint deny that the charges made for services rendered in transportation of freight under said tariffs are unreasonable, excessive, or unlawful, or that they create any unreasonable preference or advantage in favor of cities located upon or taking Mississippi River rates, or in favor of cities located upon or taking Missouri River rates, as against said city of Des Moines, or that the exaction of said rates subjects the said city of Des Moines or its inhabitants and persons engaged in the transaction of business at said city to undue and unreasonable prejudice or disadvantage, but, on the contrary, allege that said rates are in themselves reasonable and just rates for the services rendered between said city of Des Moines and St. Joseph and other points complained of in said petition.

Defendants admit that the class rates in force between the said city of Des Moines and city of St. Joseph are the same as the rates established by the local Iowa-Missouri interstate distance tariff of the defendant carrier, and allege that the said Iowa-Missouri interstate distance tariff rates are the same as those established by all roads doing business between the states of Iowa and Missouri, and that said rates were established many years ago by all roads doing business in said territory, and that said rates are in themselves reasonable, just, and proper.

Defendants allege that all the rates referred to by said complainants between the said city of Des Moines and St. Joseph, and other points upon the defendants' line of road mentioned in said complaint, are in themselves just and reasonable, and that as a matter of fact the rates from said city of Des Moines to competitive cities of commercial importance mentioned in said complaint are lower than the rates between other of said important cities mentioned in said complaint, and that as a matter of fact, said city of Des Moines, by reason of its geographical position and existing rates between the said city and other competitive points of commercial importance, is in position, in so far at least as the situation is influenced by said rates, to successfully compete with all of said cities of commercial importance referred to in said complaint.

That the alleged discrepancy in relative rates between the city of Dubuque and city of St. Joseph, between Omaha and Council Bluffs and Kansas City, between East St. Louis and St. Joseph, and between other competitive cities of commercial importance, referred to in said complaint, results from the fact that said cities are located at competitive railroad points, and also from the fact that in most instances the rates to and from said cities are influenced by competitive water rates, all of which justifies the difference between the rates established between said other cities as compared with the rates between



said cities of Des Moines and St. Joseph, and other competitive points referred to in said complaint.

That practically all of the rates complained of in said complaint have been fixed by other railroads, and that the said defendants have no control over same, but are compelled by competition with such other railroads to participate in said rates as established, although in many instances the same are unreasonably low and unremunerative to said defendants.

This case was heard in Des Moines on December 28 and 29, 1908, after due notice, and only two witnesses appeared in behalf of complainant—the freight commissioner of complainant and the president of the Bridge & Iron Company. -

The freight commissioner in his testimony presented many tables of rates and distances of many different carriers between many different points on their respective lines, with many comparisons of such rates and distances, points out differences in such rates and distances, discusses the basis upon which such rates are prescribed, their relationship and corelationship, and what he believes to be the best basis for rate making. In cross-examination he was asked:

Have you indicated anywhere here indirectly by your exhibits what rates you would deem would be reasonable rates?

and replied:

No, sir; not specifically. My idea is that the percentage relationship is the best basis. I would not like to ask for the 36-cent scale, because if the rate between the rivers is restored to 55 cents we would want something better. The Commission in the Sioux Falls case recognized the percentage relationship, and this applies in the territory between Chicago and St. Paul and has the broadest application in the Central Freight Association territory. What I should like to have the Commission say is that the recognized rate between Dubuque and the Missouri River is 100 per cent; the rate between Des Moines and the Missouri River to be a fixed percentage of that. If the practice of applying the rate at all Missouri River crossings prevails, we ought to have some relation of that kind and upon some general adjustment. My opinion is that we should have about 60 per cent of the Mississippi River-Missouri River rate, everything being considered.

The president of the Bridge & Iron Company said, on cross-examination:

We will be satisfied with the same combination of rates that our competitors in St. Joseph have. This will give us one-half cent better than Clinton and Chicago and 2 cents better than Ottumwa. We usually find the hardest competition from the shippers at St. Louis, Kansas City, and St. Joseph, but we compete with those in Clinton and Ottumwa. The rate from Des Moines to Kansas City and St. Joseph of 11 cents was in from August to September, 1905. I do not think it was in effect from Kansas City. The 11-cent rate was voluntarily put in at first by the Wabash.

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The complainant in its brief in discussing the class rates between Des Moines and St. Joseph says:

We attempted to show by comparisons that these rates between Des Moines, which is the largest city in Iowa, and St. Joseph, are relatively and actually higher than any other like rates in the territory between Chicago and the Missouri River, and between St. Louis and St. Paul.

The complainant, by its freight commissioner, has taken the tariffs of all, or nearly all, the carriers whose lines run east and west and north and south through the territory between St. Paul and Chicago on the north and St. Louis and St. Joseph on the south, regardless of any direct connection of such lines with Des Moines, and selected therefrom the rates and distances between certain points, made comparisons, and also made comparisons of what would be the result if the Iowa distance tariff were applied to the distance between such points, just as if such transportation services were between such points over such lines under substantially similar circumstances and conditions, ignoring the existence of well-known competition at sundry points and of any influence of water transportation by rivers and lakes, and giving no consideration to what might be the result of granting the relief which, it might be inferred from the indefinite statements and comparisons of complainant, were sought in this proceeding. In the petition the prayer is that the defendants be required to put into force between the city of Des Moines and points on their line south and west of Des Moines just and reasonable rates which will not discriminate against said city and its citizens and which shall not grant any other persons or localities undue preference or advantage. On cross-examination the freight commissioner for complainant said:

What I should like to have the Commission say is that the recognized rate between Dubuque and the Missouri River is 100 per cent, the rate between Des Moines and the Missouri River to be a fixed percentage of that.

In its brief it asked for the application of the proportional rates or differentials established by various railroads between Des Moines and St. Joseph.

In some of the exhibits the comparisons show the rates to certain stations in Missouri north of St. Joseph were the same as the rates to St. Joseph and higher than the Iowa-Missouri distance tariff would make them. At the hearing the defendants admitted the mistake and promised to correct it. Supplement No. 7 of the defendant to its I. C. C. No. 4303, effective February 10, 1909, reduced the rates from Des Moines to Conception, Guilford, Cawood, Rea, Wyeth, Savannah, and Dean to the Iowa-Missouri distance basis. From Exhibit 4, which contained extracts from letters received by the freight commissioner from some of the principal business houses

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interested in the rates in controversy, the following quotations are made:

The C. A. McCune Company is in the business of wholesale shoes and rubbers. The following statement was made by Mr. C. A. McCune:

"We do a nice business with St. Joe, Kansas City, and several other points near there, and have felt that we were being discriminated against, because every customer said it cost practically as much to get goods from here as it did from Chicago, or near it.

"On the bottom of this sheet I will append a partial list of customers: Jones Dry Goods Co., Kansas City, Mo.; Greensberg Bros., Kansas City, Mo.; Greensberg Bros., St. Joe, Mo.; Kantor Shoe Co., St. Joe, Mo.; Albert J. August, wholesale shoes and clothing, St. Joe.

"We sell these parties freely and often, but have to make concessions on account of freight every time.

"We have the freight problem to overcome in South Omaha, Lincoln, St. Joe, and Kansas City. All of our goods are first class and take the highest rate. We have gotten so used to discrimination in freight rates that we feel it is almost useless to make any protest."

They ship to Wichita, Kans., Topeka, Kans., etc.

Walter Boyt Saddlery Company do a business of \$12,000 per year in northern Missouri towns—occasionally have to equalize rates with St. Joseph on account of the high rate charged immediately upon crossing the Iowa-Missouri line.

"We have competition in both manufacturing and jobbing at Burlington, Clinton, Muscatine, Davenport, St. Joseph, Kansas City, Omaha, Lincoln, Milwaukee, Chicago, St. Paul, Minneapolis, and Sioux City.

"Purchase goods in Kansas City amounting to about \$3,000 per year, the freight on which is practically the same as if purchased in St. Louis."

Bentley & Olmsted Company, wholesalers and manufacturers of shoes, do a business via the C. G. W. through St. Joe, Kansas City, Atchison, and Leavenworth. Their letter reads as follows:

"In regard to freight rates south of the Missouri line, will say:

"We ship hundreds of thousands of dollars worth of goods into the territory in question and to go through our records and make up a list as you request would be a monumental undertaking, and we would want to know more exactly what you require, what the object is, what the prospect for accomplishing something is, and what form you would want it got up in before we attempted to do anything.

"This inequality should certainly be adjusted, and we shall be glad to do all in our power to secure justice."

E. L. Watrous Manufacturing Co., makers of stamped steel hardware:

"We are constantly making both second and fourth class shipments to St. Joseph, Kansas City, and sometimes Springfield."

Campbell Heating Co., manufacturers, do business (furnaces) not only in Missouri, but to points in Texas, Oklahoma, Indian Territory, Arkansas, and Kansas. Claim their ability is because of the superiority of their product.

Harrah & Stewart Manuf. Co., brooms, whisk brooms, etc., has a strong competitor in Dubuque. Makes many shipments across the Iowa-Missouri line, including St. Joseph.

Des Moines Nursery Co. make large shipments in the fall and spring to the Dakotas, Nebraska, Oklahoma, Missouri, etc.

Chamberlain Medicine Co. ship to points west of the Missouri River, including Missouri River crossing in said states, viz: Arizona, California, Colorado, 18 I. C. C. Rep.

Idaho, Ind. Territory, Kansas, Montana, Nebraska, Nevada, New Mexico, N. Dakota, Oklahoma, Oregon, S. Dakota, Texas, Utah, Washington, and Wyoming, totalling a tonnage for eight months, 1907, 640,480 pounds.

Steel Roofing and Stamping Works, embossed cellings, siding, roofing, etc.:

"We have a competitor in Dubuque in the firm of Klauer Mfg. Co., who manufacture similar line of goods and ship to points in this and other western states. We do not sell in Kansas City, but ship amounts through Kansas City, to points in Kansas. \* \* \* One of our strongest competitors is the Milwaukee Corrugating Co., Milwaukee."

Under the law this Commission is authorized and empowered, after full hearing upon complaint made, to order a reduction in rates when it is made to appear that such rates are unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial or otherwise in violation of the act. The complainant necessarily must prove by competent evidence that such rates are unjust, unreasonable, unjustly discriminatory, or unduly preferential or prejudicial, or present to the Commission facts sufficiently clear and strong to justify the Commission to make an investigation of its own motion in the public interest.

The petition, the record, the testimony of this freight commissioner and his exhibits, and the brief of complainant constitute a voluminous compilation of statistics and tables of rates and distances and comparisons and discussions of the basis for rates and results of the application of rates and the relationship and corelationship, but combined they do not furnish any sufficient evidence or grounds to justify the Commission to make any order, or on its own motion in the public interest to make any further investigation.

Our conclusions are that the complaint has not been sustained and should be dismissed.

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No. 2544.

ACME CEMENT PLASTER COMPANY

v.

CHICAGO &amp; NORTH WESTERN RAILWAY COMPANY ET AL.

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*Submitted January 6, 1910. Decided March 8, 1910.*

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Rates of the Chicago & North Western Railway Company on cement plaster in carloads from Norfolk, Nebr., to various points upon its Niobrara branch, when from beyond, found unreasonable, and reasonable maximum rates prescribed for the future. Reparation denied.

*S. H. Cowan and J. B. Daish* for complainant.

*S. A. Lynde* for Chicago & North Western Railway Company.

*Edson Rich* for Union Pacific Railroad Company.

#### REPORT OF THE COMMISSION.

**PROUTY, Commissioner:**

The rates put in issue by this complaint are those upon cement plaster from Laramie, Wyo., where it is manufactured by the complainant, to various points of consumption upon the Niobrara branch of the Chicago & North Western Railway. The traffic is handled by the Union Pacific from Laramie to Norfolk, Nebr., and from there to destination by the Chicago & North Western. There are no joint rates in effect, but the business appears to move under through billing upon combination of rates on Norfolk.

The distance from Laramie to Norfolk by the Union Pacific is 532 miles. The rate applied by the Union Pacific upon this commodity to Norfolk, when for shipment beyond, is 10 cents per 100 pounds, with a minimum of 60,000 pounds, and 15 cents with a minimum of 30,000 pounds. These rates yield, respectively, about 3.8 and 5.6 cents per ton-mile, which certainly can not be pronounced excessive, nor does the complainant so claim.

The Niobrara branch of the Chicago & North Western extends from Norfolk in a northwesterly direction to Dallas, S. Dak., a distance of 154 miles. The construction was rather expensive for a road of this character, the grades being severe, traffic is light, and the cost of operation heavy.

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The rate applied from Norfolk to points in Nebraska is the state commission Class-C rate; that applied to the six stations in South Dakota is an interstate distance tariff, in substantial accord with the local rate of Nebraska. These rates are from 9 to 22½ cents per 100 pounds; the complainant insists that a blanket rate of 7½ cents per 100 pounds should be applied.

Cement plaster is manufactured at several points in Iowa and South Dakota, from which it is shipped to these destinations in competition with Laramie. One of these plants is located upon the Chicago & North Western at Rapid City, from which rates are made into this territory upon which the North Western would carry the traffic the entire distance. That road insists that the through rate from Laramie, which is arrived at by adding its present local rate from Norfolk, is sufficiently low in consideration of the distance and in comparison with rates from other producing points.

The complainant insists that in constructing rates to points upon this branch we ought to consider it as a part of the Chicago & North Western system and to apply such rate as would be reasonable for the average railroad in that section, without having reference to the conditions which might, if it were an independent railroad, justify the charging of a higher rate. Without undertaking to determine the proper relation between rates upon main line and branches, we do not think that the position of the complainant is well taken in this case. These rates are not between points upon the main line of the North Western and points upon this branch. That company obtains no benefit from any main-line haul with respect to this traffic. Here the Union Pacific has the main-line haul and the service upon the branch is purely local. This ought to be somewhat considered in establishing these rates.

It is correctly stated that the rates applied by the defendant from Norfolk to the various points in controversy are those established by the tariff of the Nebraska commission, but it must not be inferred from this that the members of that commission have ever passed upon the reasonableness of these rates. The Nebraska commission establishes a distance tariff applicable to the Western Classification under which cement plaster is rated as Class C. While many commodities comparable with cement plaster are to be found in this class, most of the important articles generally move upon commodity rates.

The present rates in effect are higher than those upon cattle, are a trifle lower than those upon hogs, are higher than lumber rates, and somewhat higher than rates for the transportation of all kinds of grain. Brick rates are, for some reason, about one-half these rates on cement plaster.

This commodity is particularly desirable traffic. It loads readily to the marked capacity of the car, and there is little risk of loss or

damage in transit. Its value per ton at the mill is something over \$2 for white plaster and \$3 for brown plaster like that manufactured by the complainant at Laramie.

We are of the opinion, under all the circumstances, that the rates imposed on this through business by the Chicago & North Western from Norfolk are unreasonable, and that the through rate is for that reason unreasonable to that extent, and that the rates imposed by the Chicago & North Western ought not to exceed for the future in cents per 100 pounds the rates shown below:

To—	Cents.	To—	Cents.
Creighton, Nebr.....	7	Anoka, Nebr.....	11
Verdigris, Nebr.....	8	Fairfax, S. Dak.....	14
Niobrara, Nebr.....	8	Bonesteel, S. Dak.....	14
Verdel, Nebr.....	8	Herrick, S. Dak.....	14
Menowi, Nebr.....	9	Burke, S. Dak.....	16
Lynch, Nebr.....	9	Gregory, S. Dak.....	16
Bristow, Nebr.....	10	Dallas, S. Dak.....	17
Spencer, Nebr.....	11		

Testimony shows that this commodity is usually handled to points on the Niobrara branch in carloads not exceeding 30,000 pounds. The present minimum upon this branch is 24,000 pounds upon wheat and other grain, 22,000 pounds upon cattle and hogs, 30,000 pounds upon lumber. We are of the opinion that the minimum to which the above rates apply should not exceed 30,000 pounds.

The complainant asks reparation and has specified numerous shipments to the various points involved, but we do not feel that damages with respect to the past should be awarded. When this branch was first opened for business the rates now in effect may have been reasonable, and, in process of time, with the development of business or with changing conditions, the rates which we are to-day establishing may become excessive themselves. The fact that these rates are reasonable to-day does not, of itself, prove that they have been unreasonable in the past; and we fail to so find. Reparation will therefore be denied.

An order establishing the rates will be issued.

**HARLAN, Commissioner, dissenting:**

The complaint, the hearing, and the argument, as well as the report of the Commission, seem to proceed substantially on the theory that when the through charges on a commodity moving between interstate points are attacked as unreasonable a sufficient foundation for an order has been laid if, without any proof or attempted proof that the through charges are excessive, it is shown that a part of the through charges is unreasonable. When the principal defendant urged that the total cost of the through transportation enjoyed by the complainant compared



favorably with other rates on the same commodity in the same general territory the response made in his brief by counsel for the complainant was that the contention was without merit because, as he insists, the question involved is whether the amount charged by that defendant for its part of the through haul is unreasonable. When closely analyzed the report of the majority seems to proceed on that theory. In my judgment the rates referred to in the report, most of which are rates between points in the same state, are not properly the subject of an order under this complaint, except upon a showing that the through charges are themselves unreasonable; and no such showing was made or pretended to be made, as an examination of the record will disclose.

The real subject-matter of the complaint is not affected by the order proposed to be entered, for it leaves it in the power of the Union Pacific now to raise its rates into Norfolk to a basis that will leave the total through charges precisely as they now are; it may also withdraw its present proportional rate of 10 cents from Laramie to Norfolk, leaving its local rate of 15 cents in effect without violating either the letter or the spirit of the order; or the two carriers may, without violating the terms of the order, make a joint through rate between the points in question on the basis of the present combination of rates.

For these reasons, and also because I do not understand the through charges to be in fact unreasonable, I must dissent from the conclusions announced in the majority report.

18 I. C. C. Rep.

Nos. 2648 and 2649.  
E. LAUER & SON  
v.  
SOUTHERN PACIFIC COMPANY ET AL.

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*Submitted February 15, 1910. Decided March 14, 1910.*

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Reparation on interstate shipments of hardware and other commodities from certain California points to Alturas, Cal., denied for reasons given in the report.

*William P. Seeds* for complainant.

*Charles R. Lewers* for Southern Pacific Company.

*Dodge & Barry* for Nevada-California-Oregon Railway.

REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

These cases were heard together and will be disposed of in one report.

It is alleged in the complaints that charges for the transportation of various commodities in carloads from California points to Likely and Alturas, Cal., via Reno, Nev., in December, 1908, and April, 1909, were unreasonable. Reparation is asked in each complaint.

The shipments were as follows:

December 21, 1908, billed from Stockton, Cal., to E. Lauer & Son, Alturas, Cal., care of Alturas Forwarding Company: Pipe, nails, iron, and wire; weight 29,547 pounds; rate \$33.50 per ton (\$29 to Likely, \$2 to the forwarding company, and \$2.50 local rate of the Nevada-California-Oregon Railway, Likely to Alturas); amount collected, \$494.90.

March 22, 1909, billed from San Francisco to Alturas for E. Lauer & Son: Nails, barbed wire, staples, and wire; weight 27,800 pounds; rate per ton, \$34.40; amount collected, \$478.16.

April 22, 1909, billed from Paraffin to Alturas for E. Lauer & Son: Roofing and roof coating; weight, 34,150 pounds; rate, \$34.40 per ton; amount collected, \$587.38.

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April 29, 1909, billed from San Francisco to Alturas for E. Lauer & Son: Sirup and sugar; weight, 46,390 pounds; rate, \$34.40 per ton; amount collected, \$797.90.

These shipments moved from the various points named to Reno, Nev., via the lines of the Southern Pacific Company, and from Reno to destination via the line of the Nevada-California-Oregon Railway, a narrow-gauge road extending northwesterly from Reno for a distance of 184 miles. This road was extended from Likely to Alturas, about December 1, 1908, but it was not until March 10, 1909, that through tariffs were published from California points to Alturas. The traffic prior to that time moved to Likely on the through rate, plus the local charge of the Nevada-California-Oregon to Alturas.

With respect of the first shipment, complainant asks reparation to the extent of \$2 per ton, or \$29.54, which is the charge of the forwarding company, on the theory that no adequate service was rendered by that company. It appears that the consignor billed the shipment to E. Lauer & Son, Alturas, care of the forwarding company. That company took delivery from the railway carrier at Likely, paid the charges up to that point, and rebilled it to Alturas. The charges at Alturas were collected by the Nevada-California-Oregon and included the \$2 charge for the service of the forwarding company. It also appears that the charge of the forwarding company was duly published in the through tariffs of defendants. No complaint is made of the reasonableness of the through rate from California points to Likely or the local rate from Likely to Alturas, and no hearing was had with respect thereto. The claim is one for reparation only. At the time the shipment moved there was no joint rate in effect from Stockton to Alturas. It was therefore waybilled to Likely, and as it was destined to a point beyond and was consigned in care of the Alturas Forwarding Company, in accordance with the through tariff applicable to Likely, the lower proportional rate of \$29 was applied. If the shipment had not been consigned in care of the Alturas Forwarding Company the charges would have been \$31.40 per ton to Likely and \$2.50 from Likely to Alturas, and it therefore appears that complainants saved 40 cents by reason of the shipment being consigned in care of the forwarding company. In the absence of any showing with respect of the reasonableness of the rates in question we are unable to find any basis upon which to award reparation in this case.

With respect of the three remaining shipments, the rate charged was in conformity with the published tariffs of the defendants. Reparation to the extent of \$3 per ton in the case of each shipment is asked on the ground that the defendants accepted, on the class of freight in controversy to Alturas, when destined to outlying points and consigned to the forwarding company, a proportional rate of

\$31.40 per ton, while at the same time charging \$34.40 on shipments to Alturas.

It is asserted by complainant that by reason of this proportional rate applicable to points beyond the rate of \$34.40 to Alturas was unreasonable and subjected complainant and shippers in the vicinity of Alturas to undue prejudice and disadvantage. It is further asserted that on June 4, 1909, these proportional rates were canceled and a rate of \$33 established on the traffic in question from California points to Alturas.

The evidence shows that for many years the defendants maintained alternative or proportional rates effective from California points via Reno to the terminus of the Nevada-California-Oregon Railway. Rates were constructed on this plan when the terminus was at Amadee, 80 miles north of Reno. From time to time as the road was extended to Termo, Cal., Madeline, Cal., Likely, and Alturas a proportional rate was made applicable thereto on through traffic when destined to points beyond and consigned in care of the forwarding company. The forwarding company acted as the agent of consignees at outlying towns, paying the freight charges at the terminus, warehousing the freight, assuming responsibility for it while in its possession, and arranging to forward it to consignees by team or to hold it until consignees had received notice of its arrival and arranged to have it transported by independent team carriers. It is asserted by defendants that because of the peculiar conditions existing it was necessary for consignees to have some representative at the terminus of the Nevada-California-Oregon Railway to take charge of and arrange for the forwarding of freight.

Defendants further insist that the rates to Alturas and the proportional rates beyond were made to meet competitive conditions which existed at the terminus as well as at points beyond. This competition arose by boats from Sacramento reaching Oroville, Chico, Red Bluff, and Anderson, Cal., from which team hauls were made to various points.

The rate of \$33 now in effect was established to conform to a ruling of the Commission that rail carriers subject to the act should not carry lower rates to a railway point in connection with a transportation company not subject to the act than to the same point for delivery there.

It appears that during the time the terminus of the Nevada-California-Oregon Railway was at Likely and Madeline complainant enjoyed the benefit of the lower proportional rates.

No charge is made that the \$34.40 rate was unreasonable, and no hearing was had with respect thereof. The fact that the Commission has condemned as unlawful tariffs carrying rates made in the manner

rates here under consideration were made and maintained does not necessarily imply that shippers who paid the higher rates are entitled to reparation. It is manifest that dealers at points beyond Alturas who were required to pay for a team haul of from 20 to 40 miles had no undue advantage over Alturas merchants. Under all the circumstances we do not find, in the absence of a complaint of the unreasonableness of the \$34.40 rate, that complainant has sustained any damage by the alleged discrimination. It follows that no order for reparation should be issued, and the complaints will be dismissed.

CLEMENTS, PROUTY, and LANE, *Commissioners*, dissent.

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18 I. C. C. Rep.

No. 1949.

W. J. JENNISON COMPANY ET AL.

v.

GREAT NORTHERN RAILWAY COMPANY ET AL.

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Submitted March 1, 1910. Decided March 16, 1910.

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Rail-lake-and-rail rate of 23 cents per 100 pounds on flour from Minneapolis, Minn., to New York, N. Y., found to be unreasonable in so far as it exceeds  $21\frac{1}{2}$  cents per 100 pounds.

*Albert E. Clarke and Burton Johnson* for complainants.

*Wm. R. Begg* for Great Northern Railway Company.

*S. A. Lynde* for Chicago & North Western Railway Company.

*Hale Holden* for Chicago, Burlington & Quincy Railroad Company.

*Geo. W. Markham* for Chicago Great Western Railway Company, and *A. B. Stickney* and *C. H. Smith*, receivers thereof.

*R. G. Brown* and *E. B. Peirce* for Chicago, Rock Island & Pacific Railway Company.

*George Stuart Patterson* and *Clyde Brown* for Pennsylvania Company; Pennsylvania Railroad Company; Lehigh Valley Railroad Company; New York Central & Hudson River Railroad Company; Erie Railroad Company; Delaware, Lackawanna & Western Railroad Company; Baltimore & Ohio Railroad Company; Erie & Western Transportation Company; Mutual Transit Company; Western Transit Company; and Rutland Transit Company.

*Ira B. Mills* and *Charles Elmquist* for Minnesota Railroad & Warehouse Commission, interveners.

*George T. Bell* for Kansas City Transportation Company, Board of Trade of Kansas City, and Kansas City members of Southwestern Millers' Association, interveners.

*George A. Schroeder* for Milwaukee Chamber of Commerce, intervener.

*W. M. Hopkins* for Board of Trade of the City of Chicago, intervener.

#### REPORT OF THE COMMISSION.

**CLARK, Commissioner:**

This case was originally submitted to the Commission for decision on June 3, 1909. The Commission, however, found it desirable to

reopen the case for the taking of further testimony, and further hearing was had at Buffalo in January, 1910. Additional briefs have been filed and the case has again been submitted.

Complainants are manufacturers of flour and other products of wheat, operating flouring mills in the northwest, and, together with milling companies that have intervened, operate more than 100 flouring mills with daily capacity of about 125,000 barrels of flour in the states of Minnesota, North Dakota, South Dakota, and Wisconsin.

Defendants include all of the railroads and water carriers that participate in the transportation of flour from Minneapolis and Duluth to the Atlantic seaboard. Defendants also engage in the transportation of wheat from the same territory to the seaboard, although, as will be seen later, large quantities of wheat are transported from Duluth to Buffalo by independent or so-called "tramp" steamers.

Flour moves from Minneapolis to the Atlantic seaboard under joint through rates. Wheat moving lake-and-rail to the seaboard does not move under joint through rates. The rate on flour rail-lake-and-rail from Minneapolis to New York via Duluth is 23 cents per 100 pounds; from Duluth to New York, lake-and-rail, it is 18 cents per 100 pounds; all-rail from Minneapolis, it is 25 cents per 100 pounds; and all-rail from Duluth, it is 25 cents per 100 pounds. The all-rail rate on wheat from Minneapolis to New York is 26 cents per 100 pounds, and from Duluth 26 cents per 100 pounds. The rail rate on flour from Buffalo to New York is 10 cents per 100 pounds. The local rate on wheat from Buffalo to New York is 10 cents per 100 pounds and the ex-lake rate, which also includes elevation, is 10.83 cents per 100 pounds.

The complaint is that defendants unjustly discriminate against Minneapolis and the other milling points in the northwest, against the flour which they produce, and against the complainants, in favor of millers at Buffalo and their mill products, in that the transportation charges on the mill products from the mill points in the northwest to the Atlantic seaboard are unduly high as compared with the charges for the transportation of the wheat from the same territory to Buffalo, plus the transportation of the milled product from Buffalo to the Atlantic seaboard. Complaint is also made that the rail-lake-and-rail rate of 23 cents per 100 pounds is unreasonable *per se*.

The rates on both wheat and mill products from Minneapolis to New York, either all-rail or rail-lake-and-rail, are representative of the situation, and for the sake of brevity we will discuss and refer to the rates from Minneapolis to New York as representative of the northwest milling points, on the one hand, and the Atlantic seaboard and New England points, on the other hand. For the same reason we will speak of the Minneapolis mills and millers as representative of the northwest mills and millers.

The annual wheat crop of Minnesota and the two Dakotas averages about 170,000,000 bushels. On 80 per cent of this crop the rates on wheat from the producing points are the same to Minneapolis and to Duluth. The market price of wheat at these two cities is understood to be the same substantially at all times. This wheat is hard spring wheat and differs from and is said to be superior to that grown in any other part of the United States. Complainants necessarily compete directly with other mills and millers engaged in the manufacture of flour from wheat grown in this territory and marketed in a common market.

Mills located at Buffalo grind large quantities of the Minnesota and Dakota wheat, which is brought to Buffalo by water carriers on the Great Lakes. The mill products manufactured at Buffalo are marketed principally in the state of New York, in northern Pennsylvania, and in the states east thereof. The Buffalo millers export but little flour. It appears that the Minneapolis millers market more or less of their product in the northwest, large quantities in the middle west, and that they send large quantities to the Atlantic seaboard and New England.

The milling of flour is one of the greatest industries of Minnesota and the Dakotas. Fourteen millions of dollars are invested in milling property in Minneapolis alone. In 1907 the three states had in operation 510 flouring mills, with a capacity of approximately 200,000 barrels of flour per day, and capacity for grinding approximately 262,000,000 bushels of wheat per year of 300 days, which is more than the entire crop of the three states. Obviously the maintenance and continuance of this industry is dependent upon ability to secure wheat for milling, and the enjoyment of transportation rates which keep complainants on substantial parity with their competitors in milling the same wheat for the same markets.

Certain railroads with lines reaching from Chicago to the seaboard, or from Buffalo to the seaboard, own and control practically all of the railroad mileage between Chicago and the seaboard, and also own or control all of the regular lines of package-freight-carrying boats on the Great Lakes. Therefore practically all of the tonnage of wheat and wheat products that is transported either all-rail or lake-and-rail, or rail-lake-and-rail from Minneapolis or Duluth to the seaboard or to New England is transported in whole or in part by these carriers.

Prior to the absorption of the lake lines the rail-lake-and-rail and lake-and-rail rates on flour had fluctuated considerably, but, in general, the rail-lake-and-rail rate was a well understood and established differential of 5 cents per 100 pounds under the all-rail rate. Early in 1898, after the railroads had secured control of most of the lake lines, that differential was narrowed to 3 cents by increasing the rail-lake-and-rail rate, and in April, 1902, after the railroads had



completed their control of the lake lines it was narrowed to 2 cents by another increase in the rail-lake-and-rail rate. Sixty-five per cent of the product of the Minneapolis mills that goes to the territory east of Buffalo or Pittsburg is shipped rail-lake-and-rail.

It is contended by complainants that while the present rail-lake-and-rail rate on flour from Minneapolis to New York is 23 cents per 100 pounds, the average rail-lake-and-rail rate on wheat has been 18 cents per 100 pounds. It appears that from the time the rail-lake-and-rail rate on flour was increased in 1902 the output of the Minneapolis mills has steadily decreased. The decrease from 1902 to 1907 was 2,500,000 barrels and in the last two crop-years some two millions of barrels. This decrease in total output seems to have been accompanied with an increase in domestic sales, presumably in markets not affected by the change in rail-lake-and-rail rates. On the other hand, the receipts of wheat at Buffalo have largely increased, being 26,000,000 bushels more in 1907 than in 1905, and 23,000,000 bushels more in 1908 than in 1905. The receipts of flour at Buffalo were about 30,000 tons less in 1907 than in 1906 and about 180,000 tons less in 1908 than in 1906. The output of flour of the mills at Buffalo and its vicinity increased from 966,000 barrels in 1902 to 2,665,000 barrels in 1908.

This increase in output of flour at Buffalo appears to be, as was shown in *Banner Milling Co. v. N. Y. C. R. R. Co.*, 14 I. C. C. Rep., 398, largely due to the erection at Buffalo in 1903 of a mill with a daily capacity of 6,000 barrels by the Washburn-Crosby Milling Company, which company is also one of the early and important milling firms of Minneapolis. It is understood that this same company now has under construction at Buffalo another mill with a daily capacity of more than 6,000 barrels and an elevator capacity of nearly one million bushels. A mill has also been recently constructed in New York Harbor with a daily capacity of 11,000 barrels.

Complainants herein assert that it costs the Minneapolis miller fully 14 cents per barrel more for transportation to deliver flour in New York than it costs the Buffalo miller on flour made from the same wheat. They also assert that the Buffalo miller has the further advantage of having his by-products at Buffalo at the cost of wheat transportation, whereas those by-products must be shipped by the Minneapolis miller at the flour rates.

There being no fixed or published lake rates on wheat from Duluth to Buffalo, the charges for that transportation must be determined on an average, from official records, and from the testimony. A difference of opinion is expressed as between the Minneapolis millers and the Buffalo millers as to just what costs should be included as transportation charges in getting the wheat to the Buffalo millers' mills, but it seems to be well established that the average price for transportation

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of wheat by water from Duluth to Buffalo, while asserted by some to be not more than 3 cents per 100 pounds, is not in excess of 3.5 cents per 100 pounds. The proportional rate on wheat from Minneapolis to Duluth is 5 cents per 100 pounds. The elevation at both ends for shipment via lake costs 1.6 cents per 100 pounds, and we therefore have for transportation of wheat, rail-lake-and-rail, from Minneapolis to Buffalo via Duluth almost exactly 10 cents per 100 pounds, which added to the rate of 10 cents per 100 pounds on flour from Buffalo to New York makes a transportation charge of 20 cents per 100 pounds, as compared with the rail-lake-and-rail rate on flour of 23 cents per 100 pounds.

Defendants argue that this case presents no claim or evidence in support of a claim of unreasonable rates in and of themselves. As has been seen, the complaint does allege that the flour rate from Minneapolis to New York is unreasonable *per se*. The complaint and the case bring in issue the relationship between the Minneapolis and the Buffalo millers, which, in turn, is involved in the question of the relationship of rates for transportation of wheat and of wheat products.

Defendants urge that they are not responsible for the lake rates on wheat. It appears that during the early days of the season of navigation practically all of the wheat is handled by tramp boats. It is explained that at that time the regular line or package-carrying boats are busy moving the accumulation of freight which has been concentrated at the ports in anticipation of the opening of navigation. The assistant manager of defendant Mutual Transit Company in answer to the question, "Who fixes the rates [on wheat]?" replied: "It depends entirely on conditions." He said:

Rates [on wheat] are determined the greater portion of the time by the tramp boats. During the summer months, when boats are in, it is hard to say; it simply depends on existing conditions at the time. If the tramp boats are there and want the grain they will fix the rate.

He also testified that if any tramp boats did secure shipments of flour they would not be permitted to load or unload the same at the docks of the regular line or package boats, and it appears that the defendant package lines control all of the docks at Duluth at which flour can be loaded, and at Buffalo at which it can be unloaded.

During 1908 the tramp boats transported from Duluth 68,000,000 bushels of wheat and the package boats 13,000,000 bushels, and for the five years 1904 to 1908, inclusive, the tramp boats carried approximately 120,000,000 bushels of wheat against approximately 33,000,000 bushels carried by the package boats. It appears, however, that during a certain part of the season, when the tramp boats are perhaps engaged in moving other traffic, and when the accumulation of the

package freight at the ports has been cleaned up, and before the fall rush of package freight begins, the regular lines or package boats of defendants carry practically all of the wheat.

Defendants show that it costs more to transport flour by lake than it does to transport wheat, and complainants concede an additional cost of about 2 cents per 100 pounds, but they show that the average charge for transporting wheat from Minneapolis to New York, rail-lake-and-rail, has not been in excess of 18 cents per 100 pounds until the ex-lake rate from Buffalo to New York was raised. They contend that therefore the rate on flour should not be more than 20 cents per 100 pounds.

The records in *Banner Milling Co. v. N. Y. C. R. R. Co.*, *supra*, and in *Bulte Milling Co. v. C. & A. R. R. Co.*, 15 I. C. C. Rep., 351, are stipulated into the record in this case.

The Duluth Universal Milling Company and others intervened in support of complainants' cause. These interveners were interested in seeing that the differential Minneapolis over Duluth on rail-lake-and-rail shipments should be maintained. The Minneapolis interests admit that their location about 150 miles from the lake port justifies this differential against them. The rail-lake-and-rail rates on flour from Minneapolis are joint through rates. No particular factor in or division of these rates is attacked by the Minneapolis interests. Therefore there is no occasion to consider the differential which applies to Minneapolis over Duluth.

The Board of Trade of the city of Chicago intervened, supporting the contention of complainants and for the purposes as stated:

First. To secure a parity of rates between wheat and flour for our millers and grain dealers, thus removing the discrimination against them which now exists.

Second. To preserve a relatively equitable adjustment in the rates on wheat and flour from Chicago, as compared with rates from Minneapolis, Duluth, and all other lake ports, should the relief prayed for by complainants be granted.

In 1900 the rate on flour via lake-and-rail from Milwaukee to New York was 24 cents per barrel, and in 1907 it had been increased to 31 cents per barrel, while during the same period the rate on wheat via the Lakes from Milwaukee to Buffalo was reduced.

In the *Bulte case* the Commission found that the transportation charges on wheat and on flour from the west and northwest ought to be on a substantial parity, and we see no reason for changing that conclusion. One of the traffic officers of defendants in speaking of the change in the rate on flour between Buffalo and New York from 11 cents to 10 cents, said: "Following our long-established custom we made that reduction apply to grain as well as grain products."

Milling grain in transit is an important question in the movement of grain and flour from producing points in the northwest to the sea-

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board. Testimony in the *Bulte case* shows that about 12,500,000 bushels of wheat were available in 1907 to the Minneapolis mills under milling-in-transit privileges, 11,000,000 bushels of that coming from Kansas and Nebraska. Under this transit privilege the Minneapolis millers were able to lay this flour down in Chicago at a rate of 7.5 cents above the local rate to Minneapolis. Milling-in-transit privileges are accorded at many places northwest of, at, and east of Chicago. Considerable milling is done in Chicago, the mills of two firms having a daily capacity of 6,600 barrels. Sixty-five per cent of their output is milled from northwest spring wheat. A Chicago miller testified that in so far as eastern competition with Buffalo and eastern mills is concerned the Chicago miller is relatively in the same position as the Minneapolis miller.

The Chicago grain and milling interests complain that under the common ownership of rail and boat lines the carriers adjust the rates from Buffalo east so as to hold up the water transportation rates higher than they could otherwise be maintained, and that thus Chicago is unjustly deprived of the advantages which she should enjoy from her location upon the lake.

This intervenor lays much emphasis upon the allegation (and no doubt the fact) that the local rates and the so-called at-and-east rates on grain from Buffalo to New York are higher than the divisions which the same carriers accept out of the joint through rates from Chicago to New York for the haul from Buffalo to New York. That is hardly an issue in this case. It has been frequently held that the division of a joint rate which a carrier accepts is not a fair measure of its local rate. Some of these defendants have their own continuous rail lines from Chicago to New York and have no divisions of the through rate on wheat from Chicago to New York. The defendants that do not have their own rails through have to accept such divisions as they are able to get.

One of defendants' witnesses in explaining the advance in the at-and-east of Buffalo rates on grain, said: "Why, we needed the money, I guess." Another said that the rates were too low and that defendants thought that they should get more for carrying that traffic, and that the rates were not predicated upon any relation to the all-rail rates, but upon competition with the Erie Canal. As has before been intimated, these rates include certain costs for elevation, etc.; their intrinsic reasonableness is not fairly at issue nor possible to determine in this case, and it should be remarked that further reduction in the cost of carrying wheat rail-lake-and-rail from Minneapolis to Buffalo or points east of Buffalo would operate directly against the contention of complainants herein. From other sources we are informed that Canadian competition through Georgian Bay

ports on eastbound grain, especially for export, has been very keen and extremely difficult to meet of late.

The traffic manager of one of the defendants herein expressed the opinion that 3 cents per 100 pounds would be a fair difference between all-rail and rail-lake-and-rail rates on flour, and admitted that, because of common ownership between the all-rail and lake-and-rail carriers, if a 5-cent differential were agreed upon it could be maintained. Another traffic officer of one of the defendants expressed the opinion that a differential of 2 cents is not sufficient.

It appears that the miller has advantages in buying wheat at a so called terminal market, because he is there able to secure the different qualities that are desired for milling purposes in order to secure a proper blend. Chicago is one of the greatest, if not the greatest, of terminal markets, but it contends in this proceeding that its millers are at a disadvantage as compared with the Minneapolis millers because of the milling-in-transit privileges accorded to the Minneapolis and interior millers on wheat for milling purposes. It is contended that these milling-in-transit privileges permit the Minneapolis miller to ship flour all-rail to Chicago at a net rate of 7.5 cents per 100 pounds, as compared with 10 cents per 100 pounds on wheat which the Chicago miller has to pay. That, again, is not a question which can be determined in or upon the record in this case and is not exactly germane to the issue here.

The complaint of Chicago is stated in brief to be—

Our complaint is limited to the ex-lake rate, which we hold to be unfair and unreasonable compared with the division of the all rail easterly from Buffalo rate for the same service by the same carriers to the same destination.

This intervenor's prayer is that—

An order be made requiring the defendant carriers in trunk-line territory to cease and desist from exacting, charging, or demanding any greater sum for the transportation of wheat from Buffalo to New York City and other Atlantic seaboard ports and points in trunk-line territory, when coming from the Lakes, than that charged, received, and collected on wheat delivered to them from connecting or all-rail carriers for a like and contemporaneous service from the same point to the same destination.

Beyond doubt the rate from Buffalo to New York on ex-lake grain has been increased in recent years, and it seems obvious that a higher rail rate from Buffalo to New York would assist in holding up the lake rate to Buffalo, and it is equally obvious that a high rail rate from Buffalo to New York in connection with the lake rate to Buffalo would assist in holding up all-rail rates from Chicago to New York. The rail rate on grain from Buffalo to New York must of necessity compete with the rates on the Erie Canal, is intrastate as to some lines, and, as has been seen, the major portion of the wheat going to Buffalo by lake is moved by independent or tramp vessels. It would seem

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that the all-rail rate applicable to traffic that has been brought in by independent water carriers, when complained of as unreasonable, must be considered in and of itself or in comparison with a competitive rate with relation to which some discrimination is alleged or shown. We repeat that we can not test the reasonableness of a rate solely by comparison with the division of a joint rate which the carrier sees fit to accept, unless upon a showing that the division of the joint rate is less than the cost of the service. It is also to be noted that the rates on wheat and on flour from Buffalo to New York are on substantial parity, and that the rate on flour is that which this Commission found to be reasonable.

In the *Banner Milling Co. case, supra*, we found that 10 cents per 100 pounds was a reasonable rate for transporting flour from Buffalo to New York. In that proceeding it was testified that the Buffalo millers were conducting their business upon a profit of from 3 to 5 cents per barrel of flour. In the present case it is testified that in the transportation charges alone the Buffalo miller has an advantage of from 14 to 18 cents per barrel of flour over the Minneapolis miller, and although this case was reopened for the taking of further testimony, and witnesses who testified in the *Banner Milling Co. case* and originally in this case were again heard, there is no satisfactory explanation of this conflict in testimony. The manager of the Washburn-Crosby mills at Buffalo testified that they sometimes transfer orders to their Minneapolis mills, but he was unwilling to say to what extent such orders had been transferred. The rates on wheat being the same from the wheat fields to Minneapolis and to Duluth, the Buffalo miller can justly and properly compute his transportation charges from Duluth, and the Minneapolis miller must, as he does, concede the justness of the additional transportation costs due to the location of Minneapolis. In comparing the transportation charges on wheat and on flour, both must be computed from Minneapolis, as the Minneapolis flour rate is the one attacked. The commercial profits of the Minneapolis and Buffalo millers would be computed upon another basis, and are neither controlling nor important here. The charges paid by them, respectively, for transportation services are about as follows: The Minneapolis miller pays 23 cents per 100 pounds, or 46 cents per barrel of flour from Minneapolis to New York. The Buffalo miller ships from Duluth to Buffalo 270 pounds of wheat from which to make a barrel of flour, and upon that he pays 9.45 cents for transportation and 4.32 cents for elevation. He pays 20 cents for transporting his barrel of flour from Buffalo to New York, and has therefore paid total charges 33.77 cents, which includes the freight to Buffalo on 70 pounds of by-product, amounting to 2.45 cents. Insurance, storage, switching, cleaning, etc., might change these figures slightly, but apparently such charges are common to both and about equal.

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As has been seen, the lowest rate on flour from Minneapolis to New York is via Duluth and is 5 cents per 100 pounds higher than the rate from Duluth. It is therefore seen that in spite of a differential of 5 cents per 100 pounds against the Minneapolis miller as compared with the Duluth miller, Minneapolis has been and still is the greatest flour-milling center in the country. It also appears that the milling industry at Duluth has been declining, and it is suggested that this is due to the rate adjustment. This suggestion we can not accept in view of the fact that the records show fluctuations in the amount of milling done at Duluth as follows:

Date.	Barrels.
1898-1899	2, 637, 000
1899-1900	749, 000
1900-1901	477, 000
1901-1902	1, 605, 000
1902-1903	1, 423, 000
1903-1904	1, 031, 000
1904-1905	635, 000
1905-1906	1, 032, 000
1906-1907	774, 000
1907-1908	585, 000

We therefore have this situation: For a number of years prior to 1898 the regular or package lines of boats on the Lakes were independent of the railroads and a well-recognized and established differential of 5 cents under the all-rail rate existed via rail-lake-and-rail. The railroads gradually absorbed the lake lines and in 1898 they increased the rail-lake-and-rail rate on flour 2 cents per 100 pounds and in 1902 increased this rate another cent. It is conceded that the defendant railroads own or control all of the boat lines that transport flour from Duluth to Buffalo. These boats also engage in the transportation of wheat. At some seasons of the year the rate on wheat is made by the tramp boats and at other seasons by the regular line boats. The records of the Duluth Board of Trade and of the United States Government and the testimony in the case establish the fact that the average rate for transporting wheat by water from Duluth to Buffalo is not in excess of 3.5 cents per 100 pounds. It is admitted that this is a profitable rate. It costs less to carry wheat than to carry flour on the Lakes. Independent boats that were originally built and fitted to engage in package freight business are unable to secure and engage in that business because defendants control the terminals and wharves and refuse to permit independent boats to load or unload thereat and refuse to receive packages from independent boats. Some of defendants' witnesses testified that the differential

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of 2 cents between all-rail and rail-lake-and-rail rates is not sufficiently wide.

This record shows that subsequent to the increase in rail-lake-and-rail flour rates in 1898 and in 1902, and prior to August 28, 1906, the effective date of the amended act, the actual rate paid on flour from Minneapolis to New York rail-lake-and-rail did not exceed 20 cents per 100 pounds.

The rate on flour rail-lake-and-rail from Minneapolis to New York is 23 cents per 100 pounds. This rate is divided, as we understand, 5.8 cents Minneapolis to Duluth, 7.6 cents Duluth to Buffalo, and 9.6 cents Buffalo to New York. The transportation charges on wheat from Minneapolis to Buffalo are on the average, including elevation, just about 10 cents per 100 pounds, divided 5 cents Minneapolis to Duluth, 3.5 cents Duluth to Buffalo, and the remainder for elevation, and the rate on flour from Buffalo to New York is 10 cents per 100 pounds. There is therefore a difference of 3 cents per 100 pounds in these transportation charges to the disadvantage of the Minneapolis miller.

The charge for transportation of wheat rail-lake-and-rail from Minneapolis to New York, using the existing ex-lake rate from Buffalo of 10.83 cents per 100 pounds and including cost of elevation is a little less than 21 cents per 100 pounds. The additional costs to the Buffalo miller for handling wheat at Buffalo seem to be common to the milling business and to be substantially the same as and offset by similar costs borne by the Minneapolis millers and not figured in as transportation cost. The difference in profits and ability to sell in common markets as between the Buffalo miller and the Minneapolis miller must be purely commercial questions, in so far as they go beyond the above-outlined difference in transportation costs.

The Commission found in the *Bulte Milling Co. case* that there should be substantial parity between rates on wheat and on flour all-rail, and said:

This policy seems on many grounds to be a sound one as applied to this territory. In common practice a manufactured product usually takes a higher rate than the raw material from which it is made. But if a higher rate be demanded on flour than is collected on wheat, the tendency of the adjustment would be to concentrate the milling interests toward the east. On the other hand, if flour should be given a lower rate than wheat, the tendency would be to concentrate the milling interests as near the wheat fields as possible, for traffic ordinarily moves not only on the cheapest rates, but in the cheapest form. The maintenance of a parity of rates on wheat and flour tends to equalize conditions at all points at which milling enterprises may exist. The importance of such an adjustment of rates is fully conceded by counsel for the complainants. \* \* \*

No order can, therefore, properly be entered at this time with respect to the eastern proportionals. But without expressing any final opinion it may be well to say that we see no reason why the absolute parity of rates west of Chicago and St. Louis should not be extended to the seaboard.

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There is no reason why this principle should not be applied to lake-and-rail rates as well as to all-rail rates, if due and proper allowance is made for the difference in the cost of handling wheat and flour on the Lakes. The rule has been applied in years past to the traffic now considered. It now applies to this traffic all-rail, and a departure from it by defendants is the principal cause of this complaint.

From Minneapolis to Duluth the rates on wheat, 5 cents, and on flour, 5.8 cents, are substantially on a parity. The same is substantially true as to the rates from Buffalo to New York, where we find the local rate on flour 10 cents, the division of the all-rail rate from Minneapolis 9.6 cents, the local rate on wheat 10 cents, and the ex-lake rate on wheat 10.83 cents. This ex-lake rate includes, as has been seen, some costs of elevation, etc. It has somewhat recently been raised above the level at which it stood for a long time, and at its present level is particularly objected to by the Chicago interests. It is, however, on substantial parity with the rate on flour which, in the *Banner Milling Co. case, supra*, we found to be reasonable, and nothing now presented persuades us that that finding should be changed. From Duluth to Buffalo, however, the rates and charges are not nearly or substantially upon a parity. The charge on wheat is 3.5 cents and on flour 7.6 cents. It appears that 2 cents per 100 pounds fully compensates for the additional cost of transporting flour as compared with wheat, but here we find an additional charge of 4 cents.

These proportional rates and divisions of rates are not taken by us as conclusive in determining the reasonableness of either local or joint through rates. They are, however, highly illustrative and emphasize the conclusion that is reached by other tests.

The rate complained of, 23 cents per 100 pounds on flour via rail-lake-and-rail from Minneapolis, Minn., to New York, N. Y., and other Atlantic seaboard points taking the same rate, is unreasonable in so far as it exceeds  $21\frac{1}{2}$  cents per 100 pounds. We find that for the future that rate should not exceed  $21\frac{1}{2}$  cents per 100 pounds, and such an order will be entered.

18 I. C. C. Rep.

No. 2086.

WHEELING CORRUGATING COMPANY

v.

BALTIMORE &amp; OHIO RAILROAD COMPANY ET AL.

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*Submitted February 21, 1910. Decided April 4, 1910.*

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Commodity rate on iron roofing, carloads, from Mississippi River to Nowata, Okla., found unreasonable to the extent it exceeded class rate. Reparation awarded.

*Edwin C. Jepson* for complainant.

*H. H. Marsh* for Baltimore & Ohio Railroad Company.

#### REPORT OF THE COMMISSION.

**COCKRELL, Commissioner:**

On October 31, 1908, complainant shipped from Wheeling, W. Va., to Nowata, Okla., one carload of iron roofing, weight 36,000 pounds, on which defendants charged and collected \$248.40. On the date this shipment moved the rate lawfully in effect via the lines of the defendants was 67½ cents per 100 pounds, a combination of fifth class rate of 22½ cents per 100 pounds from Wheeling to the Mississippi River plus a commodity rate of 45 cents from there to destination. The charges which should have been collected were \$243, an overcharge of \$5.40.

The fifth class rate, applicable to iron roofing from the Mississippi River to Nowata, Okla., is 43 cents per 100 pounds. The commodity rate on iron roofing, carloads, from the Mississippi River to Claremore, Okla., found in the above-mentioned tariff, is 45 cents per 100 pounds, and the fifth class rate 48 cents per 100 pounds. Nowata is a point less distant from the Mississippi River than is Claremore by approximately 26 miles. Complainant asks reparation in the sum of \$7.20, based on the commodity rate having been 2 cents per 100 pounds higher than the class rate. Other than Nowata there are but few points in Oklahoma to which from the Mississippi River the commodity rate on iron roofing is higher than the fifth class rate under the Western Classification.

On January 10, 1910, the 67½-cent rate from Wheeling to Nowata was reduced to 54 cents per 100 pounds. Therefore the bases on which

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refund is asked are three—that the fifth class rate from the Mississippi River to Nowata was 2 cents lower than the commodity rate; that the commodity rate from the Mississippi River to Claremore, a farther distant point on the same line, was 45 cents, and that since the shipment moved the rate on iron roofing from Wheeling to Nowata has been reduced 13½ cents per 100 pounds.

On the first point complainant contends that the principal reason for the publication of commodity rates is to provide lower rates than would be applicable under classification. While a commodity rate may be a *different* rate from a class rate, it does not necessarily follow that it must be a lower rate, nor is it obligatory upon the carrier to thereby establish a lower rate.

The second point is that the commodity rate to Claremore is the same as the commodity rate to Nowata, notwithstanding the fact that Claremore is 26 miles farther distant, both on same line, and that the class rate to that point exceeds the commodity rate by 8 cents. There is no testimony in the record which indicates a difference in the circumstances and conditions surrounding the transportation to Claremore from those obtaining to Nowata. The delivering defendant made no appearance at the hearing, but inasmuch as the commodity rate to Nowata does not exceed the commodity rate to Claremore, on its face there is no violation of the 4th section.

As to the third point, the joint rate of 54 cents now applicable from Wheeling to Nowata became effective fourteen months after the shipment moved. There is no evidence as to whether or not during that time the conditions have changed, and no order for the future will be made.

In view of all the circumstances and conditions we are of the opinion that a commodity rate of 45 cents per 100 pounds on iron roofing, carloads, from Mississippi River to Nowata at the time shipment moved was unjust and unreasonable to the extent it exceeded the class rate of 43 cents, and that complainant is entitled to reparation in the sum of \$7.20 from the defendant, the St. Louis, Iron Mountain and Southern Railway Company, with interest.

No order will be made with reference to the admitted overcharge, but it is expected that defendants will immediately refund that amount to the complainant.

An order in accordance with the foregoing report will be entered.

18 I. C. C. Rep.

No. 3114.  
JOHN A. OKERSON  
v.  
PENNSYLVANIA RAILROAD COMPANY ET AL.

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*Submitted March 3, 1910. Decided April 4, 1910.*

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Class rate held to be unreasonable in view of lower distance rate formerly in effect and lower commodity rate established after movement. Reparation awarded.

*John A. Okerson* for complainant in person.

*Geo. D. Dixon* for defendants.

REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

The complainant alleges that about September 12, 1908, there was shipped to him, at Englishtown, N. J., from Frederick Road, Md., a carload of agricultural lime, the actual weight of which was 34,000 pounds; that upon this shipment he was charged and paid \$61.21, based on a class rate of 17 cents per 100 pounds, minimum weight 36,000 pounds; that from January 2, 1906, to April 1, 1908, a commodity rate of \$1.60 per net ton was in force over lines of defendants for a distance of 172 miles; that, effective November 28, 1908, the defendants established a commodity rate of \$1.65 per net ton on agricultural lime between Baltimore and Englishtown and made provision in their Freight Distance table, I. C. C. No. G-2157, and also in official list of stations, whereby shipments to and from Frederick Road, Md., would take Baltimore rates; that this rule had been in force for a number of years, but through error or oversight the tariff establishing said rate of \$1.65 per net ton did not specify Frederick Road, Md., or refer to the table which provided that Frederick Road would take Baltimore rates; that the only rate applicable at the time of movement was 17 cents per 100 pounds, minimum 36,000 pounds; that by reason of the foregoing facts the complainant has been subjected to the payment of an unjust and unreasonable rate and has been overcharged on said shipment to the extent of \$33.15, the difference between the charges actually collected and the charges that

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would have been collected on basis of the rate of \$1.65 per net ton, minimum 34,000 pounds. Reparation is asked.

The defendants in their joint answer admit the statements in the complaint and express their willingness to make reparation in the sum of \$33.15, averring that their present tariff rate on agricultural lime in carloads between Frederick Road, Md., and Englishtown, N. J., is \$1.65 per net ton.

Upon the statements in the complaint and the admissions in the answer the Commission finds that upon the shipment in question any rate greater than \$1.65 per net ton, minimum 34,000 pounds, was unjust and unreasonable and that complainant is entitled to reparation in the sum of \$33.15, with interest thereon.

An order will be issued accordingly.

18 I. C. C. Rep.

No. 2140.

CONTINENTAL LUMBER &amp; TIE COMPANY

v.

TEXAS &amp; PACIFIC RAILWAY COMPANY ET AL.

No. 2172.

BLOCKER-MILLER COMPANY

v.

SAME.

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*Submitted February 10, 1910. Decided April 4, 1910.*

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The rate on lumber and ties from certain points in Texas to El Paso, an average distance of 820 miles, was 25 cents per 100 pounds. Between the same points a proportional rate of 18 cents was maintained on pine lumber and pine ties when destined to Arizona and New Mexico. Complainants shipped large numbers of oak ties from these points to Douglas, Ariz., on which, in the absence of a joint through rate, the Texas & Pacific Railway charged the lumber rate of 25 cents for its service up to El Paso. Upon complaints charging that the rate on oak ties was unreasonable in and to the extent that it exceeded the proportional rate on pine ties, and demanding reparation on the basis of the difference; *Held*, That a rate on oak ties not exceeding the rate on oak lumber and yielding little over 6 mills per ton per mile can not be condemned as unreasonable or excessive for the Texas & Pacific line between Texarkana and El Paso; that reparation should be denied; and that the complaints should be dismissed.

*R. W. Franklin* for Continental Lumber & Tie Company.

*McGrady & Mc Mahon* for Blocker-Miller Company.

*T. J. Freeman* for Texas & Pacific Railway Company.

*Hawkins & Franklin and Head, Dillard, Smith & Head* for El Paso & Southwestern Railroad Company.

#### REPORT OF THE COMMISSION.

**COCKRELL, Commissioner:**

These two cases were consolidated by agreement of the parties because the issues in controversy are the same and both cases can be disposed of in one opinion. The Continental Lumber & Tie Com-

pany complains that in January, 1908, it shipped from certain points in Texas to Douglas, Ariz., on through bills of lading issued by the defendant, the Texas & Pacific Railway Company, via the Texas & Pacific Railway to El Paso, and via El Paso & Southwestern Railroad to Douglas, 57 carloads of oak ties, weighing 3,554,900 pounds, upon which it was charged and paid 25 cents per 100 pounds, amounting to \$8,887.50, to El Paso, Tex.

The Blocker-Miller Company complains that during August, September, and November, 1907, it shipped from certain points in Texas to Douglas, Ariz., over defendants' lines, 67 carloads of oak ties, weighing 3,523,700 pounds, upon which it was charged and paid 25 cents per 100 pounds, or a total of \$8,804, to El Paso, Tex.

The complainants charge that the 25-cent rate so paid by them was unjust and unreasonable to the extent it exceeded 18 cents per 100 pounds; that the 25-cent rate was named in a tariff of the defendant the Texas & Pacific Railway Company as a proportional rate to El Paso on all shipments originating on the Texas & Pacific Railway west of Texarkana, destined to Arizona and New Mexico; that said defendant at the same time had between the same points in Texas a tariff naming a proportional rate of 18 cents per 100 pounds on pine ties to El Paso, and that it is unjust and unreasonable to charge a higher rate on oak ties than on pine ties.

Reparation is asked in the sum of the excess of the 25-cent rate over the 18-cent rate. The defendant the El Paso & Southwestern Railroad Company in its answer states that it operates a line of railroad situated entirely in New Mexico and Arizona, was not a party to the tariff of its codefendant imposing the 25-cent rate to El Paso, did not receive any part of such rate or participate therein in any manner, and denies that complainants are entitled to any relief from it.

The defendant the Texas & Pacific Railway Company denies the correctness of the statements in the complaints, that it had any joint through rate, or that the 25-cent rate was a proportional rate, or was unjust or unreasonable, or that complainants are entitled to any reparation. It asserts that such rate of 25 cents per 100 pounds was a just and reasonable rate; that there was no reasonable ground for the complainants having any misunderstanding in regard to rates; that its local rate of 25 cents per 100 pounds to El Paso on oak ties was a just and reasonable rate and was fixed by the railroad commission of the state of Texas after full hearing after ample notice in the public press; that its tariffs imposed the same rate on ties as on lumber of the same kind of wood, oak ties and oak lumber, pine ties and lumber, etc., and that it made no discrimination between ties and lumber of the same kind of wood.

The facts in this case are that the average distance from the points of origin of the shipments in question to El Paso is 820 miles; that prior to April 1, 1906, there was a rate of 34 cents per 100 pounds on lumber and ties from the points in controversy to El Paso; that effective April 1, 1906, the defendant the Texas & Pacific Railway Company filed with this Commission its lumber tariff, still in force, naming a rate on lumber and articles taking lumber rates, including ties, of 25 cents per 100 pounds, being a reduction of 9 cents from the previous rate; that said rate of 25 cents per 100 pounds was prescribed by the railroad commission of Texas; that the same 25-cent rate was and is applicable to pine lumber and ties between the points in controversy; that the 18-cent rate claimed by the complainants is a proportional rate established by the defendant the Texas & Pacific Railway Company on pine lumber, sawed pine cross ties, etc., from the said Texas points named to El Paso when destined to points in Arizona and New Mexico, and is still in force.

The El Paso & Southwestern System, a purchasing agency for the defendant, the El Paso & Southwestern Railroad Company, and some other railways operating in New Mexico and Arizona, was the purchaser of these shipments from the defendants and was to receive the shipments at El Paso and pay the rates therefrom to destination. The 25-cent rate on oak ties for the average distance between the points of origin and El Paso yields a revenue of only a small fraction more than 6 mills per ton per mile.

The case of *Beekman Lumber Co. v. C., R. I. & P. Ry. Co.*, 16 I. C. C. Rep., 528, is decisive of these complaints; the rates on ties should not exceed the rates upon lumber of the class and description of wood of which the ties are made.

Our conclusions are that the rate charged the complainants was not unjust or unreasonable and that they are not entitled to reparation. The complaints will, therefore, be dismissed and an order will be issued accordingly.

18 I. C. C. Rep.



No. 2405.

FRED L. CRESSEY FOR J. H. CRESSEY & COMPANY  
v.  
CHICAGO MILWAUKEE & ST. PAUL RAILWAY COMPANY  
ET AL.

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*Submitted September 7, 1909. Decided April 4, 1910.*

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Complainant awarded reparation on account of failure of initial carrier to route traffic as directed.

*Fred L. Cressey* for complainant.

*William Ellis* for Chicago, Milwaukee & St. Paul Railway Company.

*John W. Loud* for Grand Trunk Western Railway Company.

*E. G. Buckland* for New York, New Haven & Hartford Railroad Company.

*E. C. Clifton* for Lehigh Valley Railroad Company.

*Edgar J. Rich* for Boston & Maine Railroad.

*Lewis E. Carr* for Delaware & Hudson Company.

REPORT OF THE COMMISSION.

**COCKRELL, Commissioner:**

The Webster Mill Company delivered at Webster, S. Dak., to the defendant, the Chicago, Milwaukee & St. Paul Railway Company, on December 7, 1907, one carload of foodstuff, weight 40,000 pounds, consigned to order of J. H. Cressey & Company, Manchester, N. H., notify same, Boston, Mass., with routing instructions on bill of lading as follows: "Care Lehigh Valley Transportation Co., Milwaukee, via Harlem River." The bill of lading, with draft attached, was forwarded to complainant, who, on December 16, paid the draft and filed at Harlem River on December 27 an advance order for reconsigning the car to North Easton, Mass. When the car arrived at Milwaukee the last boat of the Lehigh Valley Transportation Company, for that season, had departed and the shipment could not, therefore, go via that line. The defendant, the Chicago, Milwaukee & St. Paul Railway, hereinafter called the Milwaukee Road, so advised its agent at Webster, S. Dak., and asked for instructions.

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The agent at Webster consulted the mill company, which requested the agent to forward by Reading Despatch, break bulk across Lake Michigan to Grand Haven. This instruction was communicated to the defendant, the Milwaukee Road, at Milwaukee, on December 19. On December 23 the Milwaukee Road at Milwaukee delivered the shipment to the Reading Despatch with a transfer freight billing, dated December 23, 1907, which contained the words "Order J. H. Cressey & Co., Manchester, N. H., via Reading Despatch, Grand Haven, break bulk," but it did not contain the words "via Harlem River" shown on bill of lading.

The Reading Despatch on December 24 issued its interline waybill showing movement from Milwaukee, Wis., to Manchester, N. H., via Durand, Suspension Bridge, Owego, order J. H. Cressey & Company, Manchester, N. H. From Grand Haven the shipment moved over the lines of the Reading Despatch via Owego and Mechanicsville, N. Y., to Williamstown, Mass., arriving at the latter point on January 9. Under general instructions from J. H. Cressey & Company to the Boston & Maine Railroad to hold for diversion orders all cars received at Mechanicsville consigned to them, this car was detained at Williamstown, owing to congestion of traffic at Mechanicsville, until February 8, 1908, when it was forwarded to North Easton via Fitchburg, Mass., and charges paid on basis of combination rate of 29.7 cents per 100 pounds, amounting to \$118.80, plus a reconsignment charge of \$2, and demurrage charge of \$23 that accrued at Williamstown, total \$143.80. This rate of 29.7 cents was the lawful charge via the route of movement from Milwaukee to North Easton, Mass.; the charges up to Milwaukee having been prepaid.

The complainant contends that the defendant, the Milwaukee Road, erred in failing to show on its transfer billing the route "via Harlem River" and as a result thereof the shipment moved over the Reading Despatch via Mechanicsville, causing an overcharge in rate of \$52 and the aforesaid reconsignment charge of \$2 and demurrage charge of \$23. According to the tariffs on file with the Commission, the rate over the Reading Despatch via Harlem River to Manchester and to North Easton, the substituted destination, was the same—16.7 cents per 100 pounds—making a difference in rate of 13 cents per 100 pounds, or charges of \$52 less than the rate or charges lawfully applicable via the route of movement to North Easton. Had the shipment moved via Harlem River it would have been reconsigned under proper tariff authority to North Easton, the reconsignment order of complainant being filed at Harlem River prior to the date the shipment would have arrived there. The actual movement via Mechanicsville, while over the route of the Reading Despatch, was out of line via the Harlem River route. It is clear to the Commission that the defendant, the

Milwaukee Road, changed that portion of the routing instructions reading "via Harlem River" without authority of the shipper. In consequence of the failure of such carrier to insert in its transfer freight bill after the words "via Reading Despatch, Grand Haven, break bulk" the words "via Harlem River," the shipment moved over the route via Mechanicsville and the complainant was injured and damaged to the extent of the charges over and above the charges that would have applied via the Harlem River route.

While the Commission has held that it will not ordinarily include demurrage charges in the adjustment of misrouting claims, this particular case is not covered by such ruling. The complainant, on receipt of notification from the agent at Mechanicsville of arrival of shipment, was confronted with the realization that to move the car to destination would involve freight charges of \$52 over and above those applicable via the Harlem River. He immediately notified the defendants, the Boston & Maine Railroad and the Milwaukee Road, that the car was out of route; that he had orders to reconsign filed at Harlem River and wanted the car forwarded to North Easton, Mass., where it belonged. After receipt of this advice, the defendants' agents took up the matter and assumed to comply with complainant's request. On or about February 5, 1908, the Boston office of the defendant, the Milwaukee Road, requested the complainant to order the car reconsigned and make claim for any overcharge, which would be paid. Immediately thereafter, complainant instructed the agent at Mechanicsville to forward the car to North Easton, Mass.

Upon the facts in the case the Commission finds that the defendant, the Milwaukee Road, should pay the complainant the sum of \$77, representing the charges of \$52, based on rate charged in excess of rate via Harlem River, the \$2 reconsignment charge, which would not have applied had proper routing been observed, and the aforesaid demurrage charge of \$23.

An order will be issued in accordance herewith.

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Nos. 1084, 1085, and 1086.  
**GEORGE S. LOFTUS**  
*v.*  
**PULLMAN COMPANY ET AL.**

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*Submitted June 1, 1909. Decided March 15, 1910.*

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On complaint challenging lawfulness of first class sleeping-car rates between St. Paul, Minn., and certain other points; *Held*:

1. The present rate of \$2 for the use of a lower berth in a first class sleeping car from St. Paul to Chicago not found unreasonable; rate for the upper berth reduced to \$1.50.
2. The present rate of \$1.50 for the use of a lower berth in a first class sleeping car from St. Paul to Superior, Wis., not found unreasonable; rate for the upper berth reduced to \$1.10.
3. The present rate of \$12 for the use of a lower berth in a first class sleeping car from St. Paul to Seattle reduced to \$10; rate for the upper berth reduced to \$8.50.
4. The present rate of \$2 for the use of a lower berth in a first class sleeping car from St. Paul to Fargo, N. Dak., reduced to \$1.50; rate for the upper berth reduced to \$1.10.
5. The present rate of \$2 for the use of a lower berth in a first class sleeping car from St. Paul to Grand Forks, N. Dak., not found unreasonable; rate for the upper berth reduced to \$1.50.

*James Manahan* for complainant.

*G. S. Fernald* and *M. D. Munn* for Pullman Company.

*J. D. Armstrong* and *W. R. Begg* for Great Northern Railway Company.

*Thomas Wilson* for Chicago, St. Paul, Minneapolis & Omaha Railway Company and Chicago & North Western Railway Company.

**REPORT OF THE COMMISSION.**

**LANE, Commissioner:**

In view of the similarity between the issues involved in these cases, it seems proper to dispose of them in a single report.

In No. 1084 the complainant challenges the lawfulness of the standard charge of \$2 exacted by the Pullman Company for the use of a berth in a first class sleeping car from St. Paul, Minn., to Chicago, Ill., via the lines of the Chicago, St. Paul, Minneapolis & Omaha Railway Company and the Chicago & North Western Railway Company.

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Request is made that the rate for the lower berth be fixed at \$1.50 and the rate for the upper berth at 75 cents.

In No. 1085 the petition puts in issue the lawfulness of the standard charge of \$1.50 exacted by the defendants for the use of a berth in a first class sleeping car from St. Paul, Minn., to Superior, Wis. Request is made that the rate for the lower berth be fixed at \$1 and the rate for the upper at 50 cents. It appearing that sleeping cars are not operated over the line of the Chicago, St. Paul, Minneapolis & Omaha Railway Company between St. Paul and Superior, as to that carrier the case will be dismissed.

In No. 1086 the lawfulness of the first class sleeping car rates from St. Paul, Minn., to Seattle, Wash., and from St. Paul to Fargo and Grand Forks, N. Dak., is called in question. Request is made that the rate for the lower berth from St. Paul to Seattle be reduced from \$12 to \$8 and the rate for the upper berth from \$12 to \$4, the rate for the lower berth from St. Paul to Fargo from \$2 to \$1.25 and for the upper berth from \$2 to 75 cents, the rate for the lower berth from St. Paul to Grand Forks from \$2 to \$1.50 and for the upper from \$2 to 75 cents.

All the rates of which complaint is made are alleged to be unreasonable, and the exaction of the same charge for the use of an upper berth as is made for the use of a lower berth is alleged to be unduly discriminatory. The defendants answer generally, denying that the rates which are the subject of attack are unreasonable or discriminatory or otherwise in violation of the act.

The Pullman Company is engaged primarily in the business of operating sleeping cars over various lines of railway throughout the United States, Canada, and Mexico. It is also a large manufacturer of cars, but this phase of its business need not be considered at this time. According to figures submitted by the Pullman Company the initial cost of the standard sleepers built within the last four years ranges approximately from \$17,500 to \$19,500 per car. The title to most of this rolling stock is vested absolutely in the Pullman Company, but there are one or two exceptions to the rule. The sleeping cars which are operated over the line of the Northern Pacific Railway Company are owned by the railway company and the Pullman Company jointly, through the medium of a so-called "Association," the revenues being shared upon an agreed basis. The sleeping cars running over the Atlantic Coast Line Railroad have a similar status.

The Great Northern Railway Company, a codefendant with the Pullman Company in Cases Nos. 1085 and 1086, owns and operates its own sleeping cars. The cost of the Great Northern standard sleepers ranges from \$13,500 to \$16,500.

The Pullman Company has contracts for the operation of its cars over virtually every important railway system in the country with the exception of the Great Northern Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, and the New York, New Haven & Hartford Railroad Company. The contracts originally entered into by the Pullman Company and the various railroads were so-called "scaled mileage" contracts—that is, they provided that a certain mileage payment should be made to the Pullman Company, the rate varying with the amount of the earnings. The revenue from the sale of seats and berths accrued of course to the Pullman Company. In some of these earlier contracts the mileage payment was at the rate of 3 cents per mile. A representative modern contract provides that if the average earnings of the sleeping cars operated are less than \$5,000 per car-year the railroad shall pay mileage at the rate of 2 cents per mile. If the car earnings average more than \$5,000 but less than \$6,000 per car-year the mileage payment is at the rate of 1 cent per mile. If the earnings are in excess of \$7,000 per car-year the railroad is exempt from the payment of mileage. It is provided further that if the earnings per car-year fall short of the stipulated amount the railroad company may at its election make up the difference in lieu of paying mileage. Other contracts exempt the railroads altogether from the payment of mileage, and still others provide that the Pullman Company shall share with the railroad company the earnings from the sale of seats and berths in excess of a certain figure.

For the purposes of this report an extended review of the results of our investigation into the lawfulness of the rates complained of is unnecessary. Suffice it to say that our inquiry has been thorough and that it has led us to the following conclusions:

The present rate of \$2 exacted by the Pullman Company for the use of a lower berth in a first class standard sleeper from St. Paul to Chicago over the lines of the Chicago, St. Paul, Minneapolis & Omaha Railway Company and the Chicago & North Western Railway Company is not found unreasonable, but the rate for the use of an upper berth is unjust and unreasonable to the extent that it exceeds \$1.50.

The present rate of \$1.50 exacted by the Pullman Company and the Great Northern Railway Company for the use of a lower berth in a first class standard sleeper from St. Paul to Superior, Wis., is not found unreasonable, but the rate charged for the use of an upper berth is unjust and unreasonable to the extent that it exceeds \$1.10.

The present rate of \$12 exacted by the Pullman Company and the Great Northern Railway Company for the use of a lower berth in a first class standard sleeper from St. Paul to Seattle is unjust and unreasonable to the extent that it exceeds \$10. The rate for the use

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of an upper berth is unjust and unreasonable to the extent that it exceeds \$8.50.

The present rate of \$2 exacted by the Pullman Company and the Great Northern Railway Company for the use of a lower berth in a first class standard sleeper from St. Paul to Fargo, N. Dak., is unjust and unreasonable to the extent that it exceeds \$1.50. The rate for the use of an upper berth is unjust and unreasonable to the extent that it exceeds \$1.10.

The present rate of \$2 exacted by the Pullman Company and the Great Northern Railway Company for the use of a lower berth in a first class standard sleeper from St. Paul to Grand Forks, N. Dak., is not found unreasonable. The rate for the use of an upper berth is unjust and unreasonable to the extent that it exceeds \$1.50.

An order will be issued in accordance with these findings.

**KNAPP, Chairman**, dissenting:

I am unable to concur in the foregoing report and will briefly indicate my reasons for dissenting. Without discussing whether the profits of the Pullman Company have heretofore been excessive, but expressing my serious disbelief that its current earnings yield more than a reasonable return upon the present value of its property, especially in view of the risks and uncertainties of its business future, I base my objections to the majority report upon altogether different grounds.

The fact that sleeping-car accommodations are furnished by an independent company, which has had an extremely profitable career and may continue prosperous for an indefinite period, seems to me wholly immaterial, except as sleeping-car earnings may properly be taken into account in determining whether the entire revenue from passenger transportation is excessive. In other words, the question presented in these cases is precisely the same, in my judgment, and should be determined by the same considerations as would govern if sleeping cars were provided in all cases by the railroads themselves and not, as is the general rule, by an outside company. Nor does it matter, save to the same extent, that the few roads which operate their own sleeping cars, as do the Great Northern and the Milwaukee, realize handsome profits from this branch of their business. It is of no appreciable concern to the passenger, either in sleeper or day coach, whether the car he rides in belongs to the road over which he is traveling or to some other company, and he is equally unconcerned as to which of them gets the money paid for his passage. The real question in all cases is whether unreasonable charges are exacted from the public for any service or facility which a railroad is bound to provide or undertakes to provide; and this question, as applied to sleeping-car rates, must be determined almost wholly by comparison,

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because there is no other helpful or even available test. What sleeping cars cost, or how much they earn, or what profits are derived from their operation, seems to me of little bearing upon the reasonableness of the charges in question. The facts of controlling weight and the only fair basis of judgment, as I think, are found by comparing sleeping-car accommodations with day-coach accommodations and what it costs to travel in sleeping cars with what it costs to travel in day coaches. When this comparison is made it becomes evident, to my mind at least, that the transportation charges now paid by passengers in sleeping cars are *relatively lower* than the charges paid by other passengers. The difference in the value of the service is greater than the difference in charge.

The railroads in effect furnish two kinds of passenger cars, differing very materially in comfort, convenience, and safety, and passengers may take one kind or the other as they choose at the different rates provided. Now, what *ought* to be paid by passengers who elect to take the superior car *in comparison* with what *must* be paid by passengers who take the inferior car because, for the most part, they feel obliged to travel as cheaply as possible? Holding, as I do, that the *relation* between sleeping-car and day-coach rates is the vital matter of concern to the public, and believing that the present differences are of doubtful justice to the day-coach passenger, I can not vote to reduce sleeping-car charges, particularly lower-berth charges, and thereby increase the relative advantages now enjoyed by sleeping-car passengers.

A concrete case from the record, which is typical of conditions generally, may serve to illustrate my point of view. The first class fare from St. Paul to Seattle is \$48.90. For this sum the passenger can make the journey in a standard day coach and have such conveniences as are ordinarily found in passenger cars of that class. By paying \$12 more, or slightly less than 25 per cent, he may travel in a sleeping car so much superior to the day coach as hardly to permit comparison. This car may fairly be called a hotel on wheels, and a hotel of attractive and even luxurious appointments. It is much heavier than the day coach and easier to ride in; its greater strength makes it very much safer. It carries comparatively few passengers, less than half the number that may be crowded into an ordinary car, and its occupants are usually persons of good appearance and unobjectionable manners. In addition to its sleeping accommodations, which are generally excellent in point of comfort and cleanliness, it has commodious toilet and smoking rooms, with other features of convenience and desirability, including the more or less attentive porter. In such a car the journey is made with little fatigue and often with positive enjoyment. Surely all this is cheap



by comparison at the cost of only 25 per cent above the day-coach rate. Is not the discrimination in fact *against the day-coach passenger*?

On many roads there are trains composed exclusively of sleeping cars and parlor cars, which fall in the same category. Such trains often include observation and buffet cars, supplied with books, magazines, and papers, to say nothing of bodily refreshments, and not infrequently carry a stenographer, lady's maid, and barber to wait upon the passengers. For all these conveniences and satisfactions the additional charge appears to me extremely moderate in comparison with the accommodations provided for and rates paid by day-coach passengers, and I fail to see upon what ground these additional charges can be found unreasonable.

If the undisputed facts of comparison and the argument based thereon are given due weight, and they seem to me peculiarly applicable and convincing in these cases, they lead to the conclusion that the sleeping-car charges in question, certainly the lower-berth charges, are not shown to be unreasonable. To reject these facts and their legitimate inferences is in my opinion to ignore the element of *the value of the service* and to leave the conclusions of the majority with little support except the fact that the Pullman Company has made a great deal of money, and that the defendant roads which operate their own sleeping cars have found the business profitable, or at least have so kept their books as to indicate that result. In my judgment, the deduction is wholly unwarranted.

It is a matter of common knowledge that the number of sleeping-car passengers compared with the number of day-coach passengers is relatively small. Leaving out all short-distance travel and taking into account only journeys of, say, 100 miles and upward, much the greater number of travelers ride in ordinary coaches. The remaining minority patronize sleeping and parlor cars, paying the additional charge therefor, as most of them are well able to do. It does not accord with my sense of justice or my understanding of the law which the Commission is appointed to administer to reduce the charges voluntarily paid by the limited number of persons who travel in sleeping cars, and I regret a decision which, as I view the matter, will operate unjustly, not perhaps to the Pullman Company, but to the public at large.

On broad grounds of social welfare I have long believed in low passenger fares for everybody, and I shall welcome a material reduction from present rates as soon as it can be made without injustice to the railroads. But I would bring this about, if I could, *before* reducing the extra cost of sleeping-car accommodations for the benefit of a comparatively few persons who, in my estimation, are now distinctly favored.

It is evident that the upper berth is less desirable to a substantial degree than the lower berth, and I would agree to some reduction of the upper-berth charges, not because there is any evidence that they are unreasonable *per se*, but because the same charge for both may be fairly regarded as an unjust discrimination against the upper-berth passenger.

I am of the opinion, however, that the difference fixed by the majority report is in some cases too great. For example, when the lower-berth rate is not more than \$1.50, I think a charge of \$1.25 for the upper berth should be allowed.

HARLAN, *Commissioner*, dissenting:

I am unable to assent to the conclusions announced in this proceeding in the report of the majority. While concurring in some of the views expressed by the Chairman of the Commission in his dissenting report I place my own dissent upon the general ground that the order directed to be entered is not justified by the record.

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No. 2959.

RACINE-SATTLEY COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY  
ET AL.

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*Submitted February 18, 1910. Decided April 4, 1910.*

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Rule in Western Classification providing that shipments which are not marked in accordance with the requirements of the classification shall be subject to a rating one class higher than that otherwise applicable found unreasonable. Reparation awarded.

*J. F. Morrison* for complainant.

*William Ellis* and *F. G. Wright* for Chicago, Milwaukee & St. Paul Railway Company.

#### REPORT OF THE COMMISSION.

*LANE, Commissioner:*

On December 8, 1908, complainant shipped two bundles of axles and four bundles of vehicle wheels, 630 pounds in weight, via the lines of the defendants from Racine, Wis., to Prescott, Ariz., charges being collected at the rate of \$5.57 per 100 pounds, or in the total amount of \$35.12. At the time of shipment the Western Classification, which governed this traffic, provided as follows:

Rule 27-A.—Each package, bundle, or piece, of less-than-carload freight must be plainly and indelibly marked, showing the name of consignee and the name of the station, town or city, and the state to which destined. (See note.)

NOTE.—Pasted labels or securely fastened cloth lined, metal, or leather tags may be used, when character of the freight prevents marking as required.

Rule 27-D.—Freight not marked according to the above requirements will be rated one class higher.

On this shipment ordinary durable shipping tags were used to indicate the name of the consignee and the point of destination, and in accordance with the rules of the classification quoted above the defendants assessed charges at one and one-half times the first class rate, whereas the first class rate would have been applicable if the shipment had been marked as required. Effective January 1 and March 25, 1909, the rules of the classification were so amended as to

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provide that securely fastened durable tags might be used in marking less-than-carload shipments of freight without subjecting them to the higher rating.

We find that the rules of the Western Classification effective at the time of shipment were unjust and unreasonable by reason of the fact that shipments marked with securely fastened durable tags were subjected to charges in accordance with a rate one class higher than that otherwise applicable. We find further that the complainant is entitled to reparation in the amount of \$11.68, with interest.

An order will be issued accordingly.

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No. 2773.

## MILBURN WAGON COMPANY

v.

## LAKE SHORE &amp; MICHIGAN SOUTHERN RAILWAY COMPANY ET AL.

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*Submitted March 19, 1910. Decided April 5, 1910.*

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1. Reparation awarded on shipments which moved under joint through rates that were in excess of the combination rates via the same routes.
2. Reparation awarded on account of an unreasonable rate used in making up combination rate.
3. Reparation denied in case in which shipment moved on combination of a rail rate that is filed with the Commission and a water rate that is not so filed.

*Smith & Baker, by E. R. Effar, for complainant.*

*N. H. Loomis, F. C. Dillard and W. F. Herrin for Southern Pacific Company and Union Pacific Railroad Company.*

## REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

The complaint in this case consists of the original petition and three amendments, as follows:

On July 27, 1909, complainant shipped one top freight wagon with springs, knocked down and crated, but with standing top, weighing 1,300 pounds, from Wagon Works station, Toledo, Ohio, to Watertown, Wis., on which defendants Lake Shore & Michigan Southern and Chicago, Milwaukee & St. Paul Railway companies collected \$30.03 at the rate of \$2.31 per 100 pounds, three times first class. At the same time the combination rate on Chicago was \$1.8432 per 100 pounds. Reparation in the sum of \$6.07, the difference between the charges collected and what would have been collected on the basis of the combination rate is asked, the through rate being alleged to be unjust and unreasonable.

Nothing having been shown to justify a through rate exceeding the combination on Chicago, we are of the opinion that the rate of \$2.31 was and is unjust and unreasonable to the extent that it exceeded

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and exceeds said combination, and that complainant is entitled to reparation in the sum of \$6.07, with interest. We are also of the opinion that the rate from Toledo, Ohio, to Watertown, Wis., on top freight wagons with springs, knocked down, but with standing top, less than carloads, should not for the future exceed \$1.8432 per 100 pounds.

*Amendment No. 1.*—On February 27, 1909, complainant shipped one carload of farm wagons, weighing 21,700 pounds, from Toledo, Ohio, to Cedarburg, Wis., on which defendants Lake Shore & Michigan Southern, Elgin, Joliet & Eastern, and Chicago, Milwaukee & St. Paul Railway companies collected \$60.76, at joint rate of 28 cents per 100 pounds. At the same time the combination on Milwaukee was 23 cents per 100 pounds. The joint rate is alleged to have been unjust and unreasonable to the extent that it exceeded the combination, and reparation in the sum of \$10.85 is asked. Defendant Elgin, Joliet & Eastern Railway avers that it received no division of the through rate, but if it handled such traffic it was on car-haul basis only. From the facts we are of the opinion that the joint rate was unjust and unreasonable to the extent that it exceeded the combination rate, and that complainant is entitled to the reparation asked, with interest. We are also of the opinion that for the future the rate on farm wagons in carloads from Toledo, Ohio, to Cedarburg, Wis., should not exceed 23 cents per 100 pounds.

*Amendment No. 2.*—On July 20, 1907, complainant shipped one carload of farm wagons from Wagon Works station, Toledo, Ohio, to Tonopah, Nev., via the lines of defendants Lake Shore & Michigan Southern Railway, Elgin, Joliet & Eastern Railway, Chicago & North Western Railway, Union Pacific Railroad, Southern Pacific Company, and Tonopah & Goldfield Railroad, on which the sum of \$836.40 was collected on a weight of 25,500 pounds and a rate of \$3.28 per 100 pounds. Claim for refund was informally presented to the Commission December 12, 1907. On the date of shipment the rate on farm wagons, carloads, minimum weight 24,000 pounds, from Toledo, Ohio, to Pacific coast terminals, including Sacramento and Los Angeles, Cal., was \$1.25 per 100 pounds. The rate from Sacramento, Cal., to Tonopah, Nev., was \$2.03 per 100 pounds, minimum weight 20,000 pounds. Effective July 10, 1907, ten days before this shipment moved, the rate applicable via the San Pedro, Los Angeles & Salt Lake Railroad, from Los Angeles, Cal., to Tonopah, Nev., was \$1.46 per 100 pounds. Effective July 22, 1907, the Southern Pacific Company established a rate from Sacramento, Cal., to Tonopah, Nev., of \$1.46 per 100 pounds. Complainant routed this shipment via Lake Shore & Michigan Southern; Elgin, Joliet & Eastern; Chicago & North Western; Union Pacific; and Tonopah & Goldfield railways, and omitted routing between the Union Pacific and the Tonopah & Goldfield because it desired the shipment to move via the Southern

Pacific and the Tonopah & Goldfield on the Sacramento combination, or via the San Pedro, Los Angeles & Salt Lake and the Tonopah & Goldfield on the Los Angeles combination, whichever made the lower charges. Complainant alleges that it has been damaged in the sum of \$140.79, the difference between the two rates on weight of 24,700 pounds (which is admitted to be the correct weight), due to mis-routing.

From all the facts in the case we are of the opinion that the rate of \$2.03 per 100 pounds from Sacramento to Tonopah, when used as one of the factors in determining the through rate from Toledo to Tonopah, was unjust and unreasonable to the extent that it exceeded the rate of \$1.46 per 100 pounds applicable from Los Angeles to Tonopah on the date this shipment moved, and from Sacramento to Tonopah two days after this shipment moved, and that complainant is entitled to reparation in the sum of \$167.03, including \$26.24 overcharge on weight, with interest.

The rate has been in effect for nearly three years and the general adjustment of rates in the territory is at issue in another case before the Commission. No order for a future rate will be made.

*Amendment No. 3.*—On April 3, 1908, complainant shipped two spring delivery wagons, one with standing top, weighing 950 pounds, and one without top, crated in two or more crates, also weighing 950 pounds, from Toledo, Ohio, to Savannah, Ga., via the line of defendants Hocking Valley Railway, Baltimore & Ohio Railroad, and Merchants & Miners Transportation Company, on which \$54.43 was collected under a joint through rate of \$2.865 per 100 pounds. It is alleged that at the time this shipment moved there were in effect combination rates on delivery wagons with tops, \$2.52 per 100 pounds, and without tops, \$2.235 per 100 pounds. Reparation in the sum of \$9.26 is asked. The allegation that the rate from Baltimore, Md., to Savannah, Ga., via the Merchants & Miners Transportation Company was 57 cents per 100 pounds on delivery wagons without tops, and 85½ cents on delivery wagons with tops, is based on letter dated July 25, 1908, to complainant's traffic manager from the commercial agent of that defendant, in which it is stated:

We do publish first class rate of 57 cents per hundredweight, Baltimore to Savannah, governed by Southern Classification. This, however, is away above the proportionate rates we provide for business coming from Toledo or Chicago.

These rates are not filed with the Commission and are therefore not lawful factors to be considered by the Commission in the determination of the reasonableness of the joint rate. The relief prayed for on this shipment is denied.

Orders in accordance with the foregoing conclusions will be entered.

No. 2424.

STEVENS GROCER COMPANY

v.

GRAND RAPIDS &amp; INDIANA RAILWAY COMPANY ET AL.

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*Submitted February 28, 1910. Decided April 5, 1910.*

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Rate on dried beans, L. C. L., from Grand Rapids, Mich., to Newport, Ark., found to be unreasonable. Reparation awarded.

*G. M. Stephen* for complainant.

No appearances for defendants.

## REPORT OF THE COMMISSIONER.

CLARK, *Commissioner*:

On April 2, 1908, complainant received at Newport, Ark., shipment consisting of 100 bags of beans, weighing 16,000 pounds, which had been transported from Grand Rapids, Mich., to Newport, Ark., by the Grand Rapids & Indiana Railway, the Vandalia Railroad, and the St. Louis, Iron Mountain & Southern Railway.

Charges were demanded and paid in the sum of \$131.20, based upon a rate of 82 cents per 100 pounds. This shipment was delivered at Grand Rapids to defendant Grand Rapids & Indiana Railway without routing instructions.

The rate of 82 cents per 100 pounds is alleged to have been unjust and unreasonable in that and to the extent that it exceeded the combination on Cairo, made up of rate of 23 cents per 100 pounds from Grand Rapids to Cairo and 45 cents per 100 pounds from Cairo to Newport.

Defendant Grand Rapids & Indiana Railway answered the complaint by denying that the shipment moved over any railroad owned or operated by it. It later filed an amended answer, in which it stated that the shipment in question was delivered to it without routing instructions and was forwarded via its line to La Otto, Ind., and from La Otto to East St. Louis via the Vandalia; that the shipment moved from Grand Rapids, Mich., to Newport, Ark., via Cairo, Ill.;

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that the through rate of 82 cents per 100 pounds then in effect was applied to the shipment, resulting in charges of \$131.20; that there was in effect at that time via Cairo combination rate of 68 cents; that it recognized the Commission's ruling that a through rate that exceeds the combination is *prima facie* unreasonable, and that it was willing, upon authority of the Commission, to join in reparation to complainant in the sum of \$22.40.

Defendant Vandalia Railroad Company answered by adopting as its own the amended answer of the Grand Rapids & Indiana Railway.

Defendant St. Louis, Iron Mountain & Southern Railway stated in its answer that this shipment was delivered by it at Newport, Ark., and that charges were assessed and collected as alleged; that at that time the combination on Cairo was as above stated, but that this shipment was delivered to it at St. Louis, Mo., from which point it was transported by it to Newport.

All parties were properly notified of hearing in the case but none of the defendants appeared thereat. The original freight bill of defendant St. Louis, Iron Mountain & Southern Railway is filed of record and shows that the shipment moved via East St. Louis.

The through rate of 82 cents per 100 pounds charged on this shipment applied via the lines of defendants via either St. Louis, East St. Louis, or Memphis. It also applied via the lines of defendants and their connections via Cairo. The rates at that time were higher on beans in bags than when shipped in barrels or boxes.

At the present time the rate is the same whether shipped in bags, boxes, or barrels, and the through rate is made up of the fourth class rate from St. Louis territory to Newport, 48 cents per 100 pounds, plus a differential of 19 cents per 100 pounds from Detroit-Cleveland territory, including Grand Rapids, making 67 cents per 100 pounds, applicable via St. Louis, East St. Louis, Cairo, or Memphis.

The through rate of 82 cents per 100 pounds charged on this shipment was unjust and unreasonable to the extent that it exceeded 68 cents per 100 pounds, and complainant is entitled to reparation. We are also of the opinion that for the future the defendants' rate on beans, dried, in bags, in less-than-carload lots, from Grand Rapids, Mich., to Newport, Ark., should not exceed 68 cents per 100 pounds.

As has been seen, the present through rate, made on the differential basis which has been established for that purpose, is 67 cents per 100 pounds, but it seems proper to note that the combination on Cairo is now 64 cents per 100 pounds, made up of 23 cents Grand Rapids to Cairo and 41 cents Cairo to Newport. The differential basis provided for in Ieland's tariff, I. C. C. No. 657, Tucker's I. C. C. No.

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149, constitutes a definite rule for constructing through rates and therefore takes precedence over other combinations in assessing charges on through shipments, and there still exists via Cairo the condition of a through rate which exceeds the combination on Cairo. This fact, together with the contradictions and inaccuracies in the answers of defendants, and the fact that all of them ignored the hearing, would seem to indicate a carelessness or indifference which does not leave the most favorable impression.

An order will be entered fixing the future rate at not to exceed 68 cents per 100 pounds, and awarding reparation to complainant in the sum of \$22.40, with interest.

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No. 2772.

J. R. JONES

v.

SOUTHERN RAILWAY COMPANY.

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*Submitted February 28, 1910. Decided April 5, 1910.*

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Rule which provides that charges on an L. C. L. shipment that is too long to be loaded through the side door of a box car 36 feet in length will be assessed on a minimum weight of 4,000 pounds found to be unreasonable.

*G. M. Stephen* for complainant.

*S. C. Neffler* for defendant.

## REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

On December 17, 1908, complainant received at Huntsville, Ala., a less-than-carload shipment consisting of two pieces of smokestack, each piece 25 feet long and 22 inches in diameter, which had been transported by defendant from Chattanooga, Tenn. The actual weight of the shipment was 1,016 pounds. Charges were collected amounting to \$17.60, based upon 4,000 pounds weight and rate of 44 cents per 100 pounds. These charges and the minimum weight applied to the shipment are alleged to have been unjust and unreasonable, and in violation of the provisions of defendant's tariff and classification. Complainant alleges that the reasonable and lawful rate for this shipment would have been 66 cents per 100 pounds on actual weight of shipment.

It appears that for a period of some sixteen years prior to August, 1894, defendant and other roads in Southern Classification territory had and applied the following rule:

When any article is too bulky to be put in a box car, it shall be subject to a special contract.

At the time this shipment moved the Southern Classification rule which was applied to it was as follows:

Unless otherwise specified, articles too long or too bulky to be loaded in box cars, but not requiring two or more open cars, should be charged at actual weight; provided, that in no case shall the charge on a single consignment be less than 4,000 pounds at the first class rate.

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The present rule, which became effective January 21, 1910, is as follows:

Unless otherwise specified in the classification, articles too long or too bulky to be loaded in a 36-foot box car through a side door of the ordinary size shall be charged at the actual weight and class rate for each article; provided, that in no case shall the charge for a shipment consisting of, or containing, such long articles loaded in one box car, or on one open car, be less than 4,000 pounds at the first class rate.

Defendant has approximately 28,000 box cars, and less than 10 per cent of these have end doors which would admit a shipment of the size of the one here considered. Complainant argues that the shipment could have been hoisted to the top of a car and from there be loaded through the end door of a box car, and that therefore it should have been shipped at actual weight. Defendant alleges that such handling of the shipment was impracticable, because of the facilities and established custom of handling less-than-carload shipments at its terminals in Chattanooga, and more particularly because of the lack of facilities and help with which to unload the shipment at destination, if it had been so loaded. The shipment was loaded on a flat car, which was hauled 95 miles for the sole purpose of transporting this shipment, and the total charges were, as has been stated, \$17.60.

The question of assessing charges upon an established minimum for less-than-carload shipments which are too bulky or too long to be loaded through the side door of a box car has been and is presented in several different phases. In *Bennett v. M., St. P. & S. Ste. M. Ry. Co.*, 15 I. C. C. Rep., 301, a package of plate glass was involved, the dimensions of which exceeded the limitations named in the Western Classification, but which was loaded into and transported in a box car. The Commission there found the rule which prescribed a minimum weight far in excess of the actual weight for a shipment which could be and which was, in fact, loaded into and transported in a box car, to be unreasonable.

In *Indianapolis Freight Bureau v. C., C. & St. L. Ry. Co.*, 15 I. C. C. Rep., 370, we considered the application of such arbitrary minimum weight to shipments of ladders and prescribed a substantially lower minimum, which is understood to be the actual weight of one dozen ladders, but confined that decision closely to the situation there presented and to shipments of ladders.

The several classifications contain rules of the nature of the one here complained of, as follows:

*Western Classification No. 47, I. C. C. No. 5, Rule 17.*

(A) Shipments, including freight returned for repairs, loaded on open cars, are subject to a minimum charge equal to that for 5,000 pounds at first class rate for each car used. Maximum charge provided by Rule 15 to be observed.  
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(B) An article too large to be loaded through the side door of a 36-foot box or stock car or too long to be loaded through the end window thereof shall (unless otherwise specified in the classification) be charged actual weight and class rate, provided that in no case shall the charge for the entire shipment be less than 5,000 pounds at first class rate.

*Canadian Classification No. 14, I. C. C. No. 1, Rule 6.*

Unless otherwise specified in the classification, L. C. L. shipments will be carried at actual weight and class rate *only* when they can be loaded in a box car through the side door thereof. Articles too long or too bulky to be so loaded require platform or end-door box cars, calling for extra service, and therefore will be carried at actual weight and class rate subject to a minimum of 5,000 pounds (for each car used) at first class rate for each consignment from one shipper to one consignee. (See note.)

NOTE.—When the classification provides for any article a lower minimum weight than 5,000 pounds, when loaded on a platform car, such lower minimum weight will apply, instead of the minimum of 5,000 pounds referred to above, for each car used.

*Southern Classification No. 37, I. C. C. No. 13, Supplement 4, Rule 26.*

(B) Unless otherwise specified in the classification, articles too long or too bulky to be loaded in a 36-foot box car through a side door of the ordinary size shall be charged at the actual weight and class rate for each article, provided that in no case shall the charge for a shipment consisting of, or containing, such long articles loaded in one box car, or on one open car, be less than 4,000 pounds at the first class rate.

*Official Classification No. 35, I. C. C. O. C. No. 35, Supplement 3, Rule 7.*

(B) Unless otherwise specified in the classification, when articles are loaded on a flat or gondola car on account of their being too bulky to be loaded in a box car through the side door thereof, they shall be charged at actual weight and class rate for each article, provided that in no case shall the charge for each article be less than for 4,000 pounds at first class rate.

(C) Unless otherwise specified in the classification, when articles are loaded on a flat or gondola car, on account of their being too long to be loaded in a box car through the side door thereof, they shall be charged at actual weight and class rate for each shipment for one consignee, provided that in no case shall the charge for same be less than for 4,000 pounds at first class rate.

It will be noted that although shipments must, and to a great extent do, pass from one classification territory to another no two of these classification rules are the same. The Official Classification provides for the assessment of extra charges only when the shipment is necessarily transported on an open car. We think that the Official Classification rule is more reasonable and fair than either of the others.

Defendant's rule provides for assessment of charges on minimum of 4,000 pounds if shipment consists of articles that are too long to be loaded through the side door of a box car 36 feet in length. It is well known that the size and length of cars have been largely and generally increased in recent years. It would be an unusual

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situation if no box car longer than 36 feet was readily available at any large or important shipping point. We think that the rule is unreasonable, and that it is unjust and unreasonable to assess charges on the minimum prescribed in this rule upon a shipment which is too long to be loaded into a box car 36 feet in length, but which can be, and which in fact is, loaded into a box car of greater length than 36 feet. We do not think that such a rule can reasonably apply except in instances where, because the shipment is too long or too bulky to be loaded through the side door of a box car, it is transported upon an open car.

In this case the shipment could not have been loaded through the side door of a box car less than about 50 feet in length. Such a car is not an ordinary car; but if a box car of that length happened to be available and in use for less-than-carload shipments going in the same direction as such a shipment, and the shipment were loaded into such car, it would be unreasonable to charge for such shipment upon the basis of a minimum weight in excess of the actual weight.

We think that the defendant should be required to change its rule so that it will provide that when articles are loaded and transported on an open car on account of being too long to be loaded through the side door of a box car or of a box car not less than 40 feet 6 inches in length, they shall be charged at actual weight and proper rate for each shipment for one consignee, subject to a minimum for the shipment of not more than 4,000 pounds at first class rate; and such an order will be entered.

The shipment here considered was loaded and transported upon an open car because it was too long to be loaded through the side door of any ordinary or available box car. We are therefore unable to find that the charges assessed were unreasonable, and the prayer for reparation must be denied.

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No. 2111.

**COPPER QUEEN CONSOLIDATED MINING COMPANY**

v.

**BALTIMORE & OHIO RAILROAD COMPANY ET AL., AND SIXTEEN OTHER CASES DISPOSED OF IN THE ORDER ENTERED HEREIN, WHEREIN THE PARTIES ARE NAMED, WHICH CASES ARE INDICATED BY DOCKET NUMBERS, AS FOLLOWS: 2112, 2114, 2115, 2117, 2119, 2120, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2131, AND 2132.**

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*Submitted December 8, 1909. Decided April 5, 1910.*

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Complainants, who smelt copper, shipped coke on joint through rates from the ovens in the West Virginia-Pennsylvania fields to El Paso and Globe, which joint through rates were not in excess of the rates from the ovens to Chicago plus the rates from Chicago to the destinations named. Complainants did not attack the reasonableness of the joint through rates, either those under which the shipments moved or the higher rates now in effect, but charged that because the carriers maintained two rates on coke from the ovens to Chicago, the higher rate applying on coke generally and the lower on coke for smelting iron from the ores, and because the carriers east of Chicago received as their proportion of the joint through rates named an amount equal to the higher rate up to Chicago, that thereby they, the complainants, had been unjustly discriminated against, that the higher rate on coke to Chicago was unjust and unreasonable to the extent of the difference between the rates, and that therefore they were entitled to reparation in the amount of such difference on shipments made by them, *Held*:

1. That the joint through rates from the ovens to El Paso and Globe were units or entreties.
2. That complainants not alleging any violation of the act by reason of the defendants charging such joint through rates can not be permitted to attack the separate divisions of such joint through rates accruing to the various carriers.
3. That the reparation authorized by the act is for damages or injuries suffered by a complainant, and this Commission will not award reparation where the whole conduct of a case shows that the demand is not based upon a real damage or injury suffered by a shipper.

*Douglas & Armitage* for complainants.

*William Ainsworth Parker* for Baltimore & Ohio Railroad Company.

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*C. B. Fernald* for Pennsylvania Company.

*George Stuart Patterson* for Pennsylvania Railroad Company and Monongahela Railroad Company.

*Clyde Brown* and *O. E. Butterfield* for Pittsburg & Lake Erie Railroad Company.

*Charles H. Bates* for Southern Pacific Company.

*E. B. Peirce* and *S. H. Johnson* for Chicago, Rock Island & Pacific Railway Company; Chicago, Rock Island & El Paso Railway Company; and Chicago, Rock Island & Gulf Railway Company.

#### REPORT OF THE COMMISSION.

**COCKRELL, Commissioner:**

These cases by stipulation were heard together and are consolidated for the purposes of this report because they ask one kind of relief, based upon similar facts, and raise the same questions for determination. The three complainant corporations are affiliated as subsidiary companies of the Phelps-Dodge Company. The Copper Queen Consolidated Mining Company has its smelter at Douglas, the Old Dominion Copper Mining & Smelting Company has its smelter at Globe, and the Detroit Copper Mining Company of Arizona has its smelter at Morenci, in the territory of Arizona. Between November, 1906, and September, 1907, complainants made large shipments of coke in carloads under the joint through rates from the coking ovens in West Virginia and Pennsylvania to El Paso, Tex., Globe, Ariz., and to points beyond and paid the charges accruing thereon. All the shipments moved by way of Chicago or Chicago-rate junctions under joint through rates from the ovens to El Paso, Tex., or to Globe, Ariz., the total charges on the shipments not terminating at El Paso or not entitled to the joint through rate to Globe having been made by the joint through rate to El Paso plus the local rates to the destinations beyond. This application of rates was in strict conformity with the tariffs in force at the time. The complaints do not attack the reasonableness or legality of the total rate charges, the joint through rates to El Paso or Globe, or the present joint through rates, which are in all cases higher than at the times specified. The prayers for reparation are based solely upon the facts stated in the petitions.

The complaints, in substantially identical terms, set forth certain carload shipments of coke over the lines of the defendants from the ovens in the West Virginia-Pennsylvania fields to El Paso, Tex., and to Globe, Ariz., on joint through rates, which to El Paso were at the times named \$7.80 per net ton and \$7.95 per net ton, and to Globe \$11.30 per net ton; that the joint through rates from the points of origin to El Paso or to Globe were based upon a rate of \$2.65 per net ton from the said points of origin to Chicago, which was the local rate as claimed by the defendants, plus \$5.15 per net ton from Chicago



to El Paso, the lines east of Chicago being allowed in the division of the through rate \$2.65; that at the times the shipments moved the initial lines, named as defendants, published a rate of \$2.35 per net ton from points of origin to South Chicago on furnace coke to be used in blast furnaces for smelting iron from the ore; that South Chicago is within the Chicago switching limits; that it is unlawful, unjust, and unduly discriminatory to apply said rate of \$2.35 per net ton from points of origin to South Chicago on furnace coke to be used in smelting iron from the ore and to assess and take in division of the through rates, to the points named, \$2.65 per net ton on furnace coke to be used in smelting copper from the ore. By amendment it is charged that the services rendered by the defendants to the complainants and to the blast furnaces at Chicago and South Chicago were like services in the transportation of a like kind of traffic under substantially similar circumstances and conditions. The prayers ask for a refund of the difference in charges based upon the difference between the rate of \$2.65 per net ton charged complainants and the rate of \$2.35 per net ton charged to the iron furnaces.

Upon these facts the complainants ask neither for a readjustment of the rates nor for the establishment of joint through rates to the destinations named, but solely for refunds based upon the 30-cent difference between the rates to Chicago on coke.

The tariffs under which the shipments moved were Southwestern Tariff Committee 36-B, I. C. C. No. 456, which applied to the shipments enumerated in all the complaints with the exception of those set forth in case No. 2122, and Morgan's Louisiana & Texas Railroad & Steamship Company's tariff I. C. C. No. 1507-B, which carried the only joint through rates from the ovens to Globe, Ariz., applying to the shipments set forth in the latter docket.

The cases now under consideration all involve shipments moving by way of Chicago, or Chicago-junction points, to which the two rates on coke applied. Eleven other cases concurrently filed by these same complainants were dismissed on their order because the shipments therein set forth moved via a Chicago-rate junction to which the coke rate of \$2.65 per net ton did apply, but to which the rate of \$2.35 on coke for use in blast furnaces for smelting iron from the ores did not apply. Not one shipment embraced in all these complaints moved under the local rate from the ovens to Chicago. The complainants were concerned only with the joint through rates from the ovens to El Paso and Globe, and concerning these joint rates they make no complaint.

The Commission has repeatedly held that under ordinary circumstances shippers are not concerned with the division of the joint through rate upon which the carriers have agreed among themselves. In every case the joint through rate on any commodity between two

given points is an entirety and is the only rate that lawfully can be applied. If the application of such joint through rate results in injustice or is unreasonable, or if undue prejudice or disadvantage is created by such rate, then complaint concerning such joint rate may be filed with this Commission and it may be proper to consider the divisions of such rate in order to determine its reasonableness. Moreover, wherever injury or damage has been suffered by reason of the carriers assessing such joint rate, the person injured may be entitled under the act to reparation or damages; but we find no authority anywhere for a complainant to attack the divisions of a joint through rate without alleging illegality under the act in the joint through rate itself.

From the very beginning this Commission has construed joint through rates as units.

In *Boston Chamber of Commerce v. L. S. & M. S. R. R. Co.*, 1 I. C. C. Rep., 436-453, we held:

The total charge for transportation is all that concerns the shipper, and not the percentages allotted by agreement to one or more of the connecting carriers in a through line. Carriers voluntarily enter into agreements for through shipments over connecting roads, and the division of the through rate is part of their mutual agreement, which the parties to the arrangement adjust for themselves, and the adjustment of which does not affect the shipper. Such adjustments may not be on the exact basis of cost of service in any case, and many other considerations may influence the parties in making them. The fact may be, therefore, that the Lake Shore road and the New York Central road may each receive more in amount of the through rate to Boston from Chicago than to New York for the respective hauls to Albany, although the service to that point is identical; but the through rates are charged for the entire haul to the final destination and are not governed by the service to some intermediate point in the line or where the line diverges to different destinations.

In *Warren-Ehret Co. v. C. R. R. of N. J.*, 8 I. C. C. Rep., 598, the Commission considered this matter, and on page 604 said:

The defendants insist that the charge complained of is a joint through rate made by connecting carriers, and how these carriers divide that rate is a matter of no concern to the shipper or consignee, and it is not material to the disposition of this case. It is true that the shipper or consignee has no direct interest in the way a joint rate is divided between the carriers, nor in the amount of the division received by each carrier, but he is entitled to inquire into such division when he complains that the joint rate is unlawful, for the amount so received by the different carriers may be significant upon the reasonableness or justice of the aggregate charge.

In *Charlotte Shippers' Asso. v. S. Ry. Co.*, 11 I. C. C. Rep., 108, at page 128, we said:

If the through rates are not unreasonable, the Commission can not condemn the same on account of the divisions thereof to the various roads forming the through lines, the law and the public being alike served by rates in the aggregate reasonable and not affected by their distribution.

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In *Pacific Purchasing Co. v. C. & N. W. Ry. Co.*, 12 I. C. C. Rep., 549, on page 552, the Commission held:

There are joint responsibilities assumed by carriers when they publish a joint rate, and one of those obligations is to treat that rate as a unit and to treat the shipment thereunder as a unit; and this not because of any contractual relation between the shipper and the originating carrier, but because the act of the originating carrier in accepting the shipment in conformity with its tariff provisions was the act of all of its connections joining in that tariff.

So that under the law, as construed by this Commission, a joint through rate is a unit, an entirety, with the divisions or component parts of which the public is not concerned unless the joint rate as a whole is illegal. Only when the public or a shipper complains of the illegality of a joint through rate as a whole can one or more of the divisions of such rate be inquired into to determine if the illegality of the whole rate is traceable to the illegality of a specific part thereof.

The Supreme Court has not passed directly upon this particular matter, but what it said in the *Parsons case*, 167 U. S., 447, is pertinent to the claims in these cases. On pages 454 and 455, the court held:

We remark again that there is no averment in this petition that the rates charged to and paid by the plaintiff were in themselves unreasonable; that is, it is not claimed that the rates charged for shipping corn from points in Iowa to Chicago were not fair and reasonable charges for the services rendered. The burden of the complaint is the partiality and favoritism shown to places and shippers in Nebraska. The plaintiff is not seeking to recover money which, inequitably and without full value given, has been taken from him. He is only seeking to recover money which he alleges is due, not because of any unreasonable charge, but on account of the wrongful conduct of the defendant.

As illustrating the lack of merit in these cases, we call attention to the facts disclosed by our tariff files. At one period during the times named herein the joint rate was not equal to the rate from Chicago to El Paso plus the rate of \$2.65 from the ovens to Chicago, but was actually equal to the rate from Chicago to El Paso plus the rate of \$2.35 per net ton from the ovens up to Chicago. The evidence does not show that at that time the carriers received less than \$2.65 per net ton on coke as their division of the through rate. From April, 1906, until May 20, 1907, the rate on coke from the ovens to Chicago was \$2.65 per net ton, and the rate from Chicago to El Paso was \$5.15 per net ton, the sum of which rates was exactly equal to the through rate from the ovens to El Paso of \$7.80 per net ton, charged the complainants. Between May 20, 1907, and July 1, 1907, the rate from the ovens to Chicago was still \$2.65, but from Chicago to El Paso it was increased to \$5.45 per net ton, whereas the through rate from the ovens to El Paso was still \$7.80 per net ton, or 30 cents per net ton less than the combina-

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tion of the locals. Again, from July 1 to July 12, 1907, the rate from the ovens to Chicago was \$2.65 per net ton and the rate from Chicago to El Paso was \$5.60 per net ton. The through rate from the ovens to El Paso, however, was only \$7.95 per net ton, or 30 cents less than the combination of locals. In other words, while the lines west of Chicago increased their rates by 30 cents and again by an additional 15 cents, making 45 cents in all, the total rate was raised only 15 cents. At the present time the through rates and the combination of the locals are at least \$1 higher than the rate of \$7.80 per net ton formerly applicable and this increase is due to the increase in rates west of Chicago. It is to be noted that not one of the complainants objects to this increase.

The testimony is clear that complainants have suffered no damage by reason of the joint through rates charged them. The chief witness for complainants, on cross-examination, said:

Page 43: Q. Do you complain in this case that the total charge imposed for the movement from Connellsville to Douglas, for example, was unreasonably high and exceeded the fair value of the services rendered?

A. No.

Q. That is what I thought.

A. As compared with something else.

Page 70: Q. \* \* \* The injury results from some other fact about which you have not yet given any testimony. That is a fact isn't it?

A. It results from our not receiving what we are claiming now. At the time this shipment moved and the way the charges were assessed on other shipments it resulted in no injury, but based on the claim we are making now it did result in injury.

The rate from the ovens to Chicago of \$2.65 per net ton on coke was not shown to be unreasonable otherwise than by comparison with the rate of \$2.35 per net ton on the same commodity when destined to the blast furnaces at or near Chicago. The evidence is clear that the rate of \$2.65 per net ton on coke was used as the basis on which the rates to all other points in Central Freight Association territory were made.

Clearly the complainants have suffered no injury or damage. It follows that these petitions must be dismissed and it will be so ordered.

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No. 2515.

STONE-ORDEAN-WELLS COMPANY

v.

PHILADELPHIA, BALTIMORE & WASHINGTON RAIL-  
ROAD COMPANY ET AL

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Submitted September 27, 1909. Decided March 14, 1910.

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A Baltimore & Ohio tariff in error named Ridgely, Md., as a point reached by its line in connection with a boat line. This boat line had gone out of existence, and complainant had notice that the point was not in fact reached by the rail line. Nevertheless, complainant ordered shipment made via that rail line, and a charge higher than if the shipment had traveled via another route was exacted; *Held*, That no reparation under the circumstances can be awarded.

*Alexander Marshall* for complainant.

*Milton S. Mead* for Philadelphia, Baltimore & Washington Railroad Company.

*G. A. Upton* for Baltimore & Ohio Railroad Company.

*Peter Schroeder* for Mutual Transit Company.

#### REPORT OF THE COMMISSION.

**PROUTY, Commissioner:**

The complainant asks for reparation on account of a shipment of two cars of canned tomatoes shipped from Ridgely, Md., to Duluth, Minn., during the month of October, 1908.

The Baltimore & Ohio Railroad Company, in connection with the Mutual Transit Company, published a rate of 28 cents per 100 pounds between the points in question, showing as the initial carrier and also as a concurring carrier, the Baltimore & Eastern Shore Transportation Company. Ridgely is a small town in Maryland and the only rail line serving it is the Philadelphia, Baltimore & Washington Railroad. The Baltimore & Eastern Shore Transportation Company formerly operated a line of boats on the Choptank River, but had gone out of business before the shipment in question. Some years ago there was a wharf on this river about 4 miles distant from the present town of Ridgely, which was also known as Ridgely, but that wharf has ceased to exist, and the road which leads to it is no longer traveled.

The complainant instructed the parties from whom these tomatoes were purchased to make shipment via the Baltimore & Ohio, but was advised by them that this was impossible, since the Baltimore & Ohio did not reach Ridgely and there was no such company as the Baltimore & Eastern Shore Transportation Company. Upon receiving this information the representative of the complainant consulted the agents of the Baltimore & Ohio and the Mutual Transit Company in Minnesota, and was told by them that shipment could be made from Ridgely to Duluth, as specified in the tariff of those companies, and thereupon the complainant peremptorily instructed its vendors to make shipment via the Baltimore & Ohio.

In attempting to carry out these instructions the tomatoes were shipped via the Philadelphia, Baltimore & Washington from Ridgely to Wilmington, and thence via the Baltimore & Ohio and the Mutual Transit Company to Duluth. The local rate from Ridgely to Wilmington was 9 cents per 100 pounds, the joint rail-and-lake rate from Wilmington to Duluth 26 cents per 100 pounds, making a combination of 35 cents, which was charged and collected. At that time the shipment could have moved from Ridgely via the Pennsylvania lines to Duluth at a through rate of 28 cents. The complainant claims to recover the difference between the amount paid and the rate named in the Baltimore & Ohio tariff.

This claim must be denied. There was no route by which shipment could be made from Ridgely to Duluth over the lines named as parties to that tariff. The complainant was advised that neither the Baltimore & Ohio Railroad nor the Baltimore & Eastern Shore Transportation Company touched Ridgely. Had the representative of the complainant been at Ridgely himself he would have found neither a Baltimore & Ohio station nor a Baltimore & Ohio tariff. In view of the information sent the complainant by the parties from whom he had purchased the tomatoes, we think the complainant must stand charged with knowledge of the actual situation, and had no right to attempt to avail itself of this tariff which could not by any possibility apply.

This is not at all the case which would be presented had the Baltimore & Ohio posted at one of its stations a tariff from that station to some point not upon its line nor upon the line of any party to the tariff and had a shipper in good faith sought to avail himself of the rate so named and been damaged thereby. No opinion is expressed as to the proper disposition of such a case.

The complaint is dismissed.

No. 2757.

WINDSOR TURNED GOODS COMPANY

v.

CHESAPEAKE &amp; OHIO RAILWAY COMPANY ET AL

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Submitted April 1, 1910. Decided April 5, 1910.

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Reparation awarded under joint through rates that exceeded the combinations on Detroit.

*F. L. Marshall* for complainant.

*E. D. Hotchkiss* for Chesapeake & Ohio Railway Company.

*O. E. Butterfield* for Michigan Central Railway Company; Cincinnati Northern Railroad Company; and Cleveland, Cincinnati, Chicago & St. Louis Railroad Company.

*Walter A. Dunnett* for Canadian Pacific Railway Company.

#### REPORT OF THE COMMISSION.

**CLARK, Commissioner:**

This complaint seeks reparation in the sum of \$192.55 on 33 carloads of hard-wood lumber shipped between August 12, 1907, and March 1, 1909, from various points in West Virginia and Kentucky on the line of defendant Chesapeake & Ohio Railway to Windsor, Ontario. Numerous clerical errors involving undercharges and overcharges occurred, and the reparation claimed includes a net overcharge of \$52.82.

These shipments moved under joint rates to which the delivering carriers were parties. The defendants severally had also in effect joint rates to Detroit, and arbitrary rates of 2 cents per 100 pounds to be added to the Detroit rates in making up rates on through shipments of lumber to Windsor, but, of course, available only in the absence of joint through rate from point of origin to Windsor. The joint through rates to Windsor exceeded the combinations of the joint rates to Detroit plus the arbitrary from Detroit to Windsor, and, in some instances, exceeded the combination joint rate to Detroit plus the 2.5 cents local rate from Detroit to Windsor. At the present

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time defendants' joint through rates to Windsor equal the combinations of the joint rates to Detroit, plus the arbitrary of 2 cents per 100 pounds from Detroit to Windsor.

If there had been no specific joint through rates from points of origin to Windsor, or if these joint through rates had been canceled, the lawful tariff rates applicable to these shipments would have been made in combination on Detroit, using the arbitrary of 2 cents per 100 pounds from Detroit to Windsor. The joint through rates therefore exceeded what would have been the lawful combination of voluntarily established rates of defendants if the joint rates had been withdrawn. The sums of those combinations, as has been stated, have since been voluntarily established by defendants as joint through rates.

There is indication in the record that some of the defendants entertained the idea that the arbitraries were available for use in constructing joint through tariffs but were not available for making up rates on through shipments where no joint through rate applied. We can not accept this view. The Michigan Central rule provides:

From points north, west, and south of Detroit add 2 cents (sixth class, which applies on lumber as per Official Classification) to Detroit rate to make through rate to Windsor, Ontario.

This tariff is concurred in by all of the defendants.

The Canadian Pacific tariff, filed in 1902, is governed by the Official Classification and authorizes the making of rates on lumber to Windsor by adding 2 cents per 100 pounds to the Detroit rates. It provides that this basis will apply "only where through prorating arrangements are in effect." A literal application of this provision could not be supported in view of the fact that the public has no means of knowing what prorating arrangements are in effect between the carriers, but as to these shipments we must assume that prorating arrangements were in effect inasmuch as the shipments all moved under joint through rates. This Canadian Pacific tariff is concurred in by all of the defendants except the competing delivering carrier, the Grand Trunk Railway.

The Grand Trunk rule is, in so far as constructing the rates are concerned, substantially like the Canadian Pacific's rule and is concurred in by all of the defendants except the competing delivering carriers, the Canadian Pacific Railway and Michigan Central Railroad.

At the hearing defendants presented no justification and no vigorous or adequate defense for joint through rates in excess of the combinations claimed. The principal defendant stated that it had been unwilling to request authority to pay reparation informally to this complainant because it did not want to discriminate between shippers via its line.



The reasonableness of the minimum weight of 40,000 pounds applicable when these shipments moved in connection with the joint rates from points of origin to Windsor is brought in issue as compared with the minimum of 34,000 pounds in connection with the joint rates from points of origin to Detroit and the arbitraries from Detroit to Windsor. Many of these shipments weighed in excess of 60,000 pounds and only a few slightly less than 40,000 pounds. The minimum now in effect is 34,000 pounds. Obviously there is no difficulty about loading to the minimum of 40,000 pounds and we are not willing to find that minimum unjust and unreasonable.

Some time since the Commission announced the rule that it would consider a joint through rate *prima facie* unreasonable if it exceeded the sum of the local rates between the same points. In *Lindsay Bros. v. B. & O. S. W. R. R. Co.*, 16 I. C. C. Rep., 6, that rule was invoked, and was applied despite the existence of a proportional rate that was somewhat lower than one of the local rates. It has since become necessary in order to do more complete justice to extend the application of the rule so that, except in special and unusual circumstances, and respecting fully the limitations placed in tariffs upon the use of basing, proportional or arbitrary rates, the fair measure of the reasonableness of a joint through rate that exceeds the combination between the same points via the same route is and will hereafter be held to be the lowest combination that would lawfully apply if the joint through rate were canceled.

We find that, at the time these shipments moved, the joint through rates applicable thereto were unjust and unreasonable to the extent that they exceeded the then existing combinations on Detroit, consisting in each case of the joint rate to Detroit plus the arbitrary of 2 cents per 100 pounds, and that complainant is entitled to reparation in the sum of \$176.04, which sum includes the overcharge of \$52.82, with interest. Such an order will be entered against the initial carrier and principal defendant, the Chesapeake & Ohio Railway, with the understanding that the other defendants will bear their respective shares thereof according to their participation in the movements of the shipments and their established divisions.

It is the admitted intent and practice of defendants to establish joint through rates on lumber based on the combinations on Detroit, and, as rates on that basis have been in effect for some time, no order for future rates will be entered.

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No. 2907.

BRUNSWICK-BALKE-COLLENDER COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY  
ET AL.

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*Submitted February 10, 1910. Decided April 5, 1910.*

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Reparation awarded because of assessment of unreasonable charges caused by the application of an unjust rule as to minimum weights on certain shipments of partitions, marble slabs, and other articles loaded into a box car.

*O. G. Ortman and J. J. Mullen* for complainant.

*William Ellis and F. G. Wright* for Chicago, Milwaukee & St. Paul Railway Company.

*S. A. Lynde* for Chicago & North Western Railway Company and Duluth, South Shore & Atlantic Railway Company.

#### REPORT OF THE COMMISSION.

**COCKRELL, Commissioner:**

This case involves an original and supplemental complaint which were heard in one proceeding.

In the original complaint the shipment involved is four crates of partitions, one crated refrigerator, and two boxes of glass transported in February, 1909, by the defendants, Chicago, Milwaukee & St. Paul and the Great Northern, from Chicago, Ill., to Chisholm, Minn., and return, for which there was collected the sum of \$97. It is alleged in the complaint that this charge was unreasonable to the extent that it exceeded \$34.32, and reparation in the sum of \$62.68 is asked. The shipment weighed 1,986 pounds, but charges were assessed on the basis of a minimum weight of 5,000 pounds in accordance with Rule 17 of Western Classification which provides, in part, as follows:

B. An article too large to be loaded through the side door of a 36-foot box or stock car or too long to be loaded through the end window thereof shall (unless otherwise specified in the classification) be charged actual weight and class rate, provided that in no case shall the charge for the entire shipment be less than 5,000 pounds at first class rate.

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The shipment in question was of such size that it could not be loaded into a 36-foot box car. It was loaded into a 41-foot car. If the charges had been assessed at actual weight the sum collected for the movement in both directions plus \$8 storage charges at Chisholm would have amounted to \$34.32.

The facts with respect to this shipment bring it within the principles announced by the Commission in the case of *Bennett v. M., St. P. & S. Ste. M. Ry. Co.*, 15 I. C. C. Rep., 301, and for reasons therein given we find that a minimum weight of 5,000 pounds on the shipment in question loaded into a box car was unjust and unreasonable and that complainant is entitled to the reparation claimed.

In addition it is to be observed that effective February 1, 1910, Rule No. 7-B of Official Classification, similar to the one under consideration, was amended to read as follows:

Unless otherwise specified in the classification, when articles are loaded on a flat or gondola car or on account of their being too bulky to be loaded in a box car through the side door thereof, they shall be charged at actual weight and class rate for each article, provided that in no case shall the charge for each article be less than for 4,000 pounds at first class rate.

We can not, in this proceeding, issue an order for change in the Western Classification, except as it applies to these defendants. An order will be entered awarding this complainant reparation in the sum of \$62.68, with interest, and requiring these defendants to cease and desist from assessing charges on weight in excess of actual weight of packages of wooden partitions, decorated and plain glass, and crated refrigerators that weigh more than 100 pounds and that can be loaded into an ordinary box car. This, of course, can be effected by a change in the classification which the defendants have adopted as governing their tariffs or by an exception thereto applicable to their tariffs.

The shipment involved in the supplemental complaint was made May 6, 1909, from Chicago, Ill., to Marquette, Mich., and consisted of two crates of wooden partitions, one box of marble slabs, and one box of plate glass. The amount collected was \$24, based on a minimum weight of 4,000 pounds in accordance with Rule 7 of Official Classification which at the time provided for a 4,000-pound minimum at first class rate on shipments which could not be loaded through an ordinary sliding door of a 36-foot box car of given dimensions. The shipment weighed 1,455 pounds and could not be loaded in a 36-foot car. The charges would have been \$7.66 based on actual weight. The application of the 4,000-pound minimum it is alleged was unreasonable.

At the hearing the defendants Chicago & North Western and Duluth, South Shore & Atlantic, admitted that under the circumstances the charges were unreasonable and expressed willingness to make refund

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if so ordered by the Commission. Under the circumstances and for the reasons given in the original case we find that the charge of \$24, exacted on the shipments in question between the points named, was unreasonable to the extent that it exceeded \$7.66, and that complainant is entitled to reparation in the sum of \$16.34, with interest.

As before indicated, the rule of the Official Classification affecting shipments of this character has been changed to conform to the views expressed in the *Bennett case, supra*. The defendants being parties to such classification, no order as to form or maintenance of the rule applicable to these shipments will be entered.

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No. 1638.

## UTICA TRAFFIC BUREAU

v.

NEW YORK, ONTARIO &amp; WESTERN RAILWAY COMPANY.

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*Submitted February 3, 1909. Decided April 5, 1910.*

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Out of defendant's charge of 30 cents per ton for switching carloads of coal from the New York Central tracks at Utica, N. Y., to the Utica Steam & Mohawk Valley Cotton Mill in that city, which is alleged by complainant to be unreasonable, the Lehigh Valley and New York Central, which transport the coal from Bernice, Pa., at a rate of \$1.50 per gross ton, absorb switching charges to the extent of \$5 per car, and the amount of switching charges assessed upon the 394 cars mentioned in the complaint in excess of the \$5 per car absorbed by the line carriers averaged \$2.95 per car; *Held*, That the switching tariff, in connection with the tariff of the line carriers, in effect names a through rate from the mine to the mill; that the shipper can complain only of so much of the switching charge as he is required to pay; and that the amount actually paid, averaging \$2.95 per car, is not found to be unreasonable for the service performed.

*J. E. Hundley* for complainant.

*John B. Kerr* for defendant.

## REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

In this proceeding defendant's charge of 30 cents per gross ton for switching coal in carloads from the tracks of the New York Central Railroad, at Utica, N. Y., to the Utica Steam & Mohawk Valley Cotton Mill, in that city, is alleged to be unreasonable.

The coal in question originates in the vicinity of Bernice, Pa., and is transported therefrom to Utica over the lines of the Lehigh Valley and New York Central under a joint rate of \$1.50 per gross ton, published in Lehigh Valley Railroad tariff, I. C. C. No. D-273, effective October 12, 1907. This tariff contains the following notation applicable to shipments of coal to Utica:

Rate includes \$5 per car of the switching charged for making deliveries to trestles and yards of coal dealers and sidings of industries located within yard limits on the Delaware, Lackawanna & Western Railroad and the New York, Ontario & Western Railway at this station.

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This coal, in carloads, is switched by the New York, Ontario & Western from the yards of the New York Central to a siding of the Utica Steam & Mohawk Valley Cotton Mill, and for this service the defendant, under its tariff, I. C. C. No. 3189, effective March 12, 1908, exacts a charge of 30 cents per gross ton. The average distance covered by this switching service is about  $1\frac{1}{2}$  miles. The number of cars switched by defendant to the cotton mills between July 31, 1907, and the date of the hearing (November 24, 1908) was 394, containing an aggregate of 10,427 gross tons, or an average of  $26\frac{1}{2}$  tons per car.

Defendant's terminus in Utica is at the west side of Genesee street, or Baggs Square, where there is a passenger station and a small freight station. Two main passenger tracks and one main freight track of the New York Central adjoin defendant's track at Genesee street. To perform switching service at Utica 2 engines are employed, each carrying a crew of 5 men. An engine goes to the New York Central yard twice a day to deliver and receive cars. Its movements in that yard are subject to the exigencies of train operations of the New York Central Company. In the morning interchange of cars is made on a track about 500 feet east of Genesee street and in the afternoon upon tracks from a half to three-quarters of a mile farther east. The track over which defendant's switching service is performed runs almost the entire distance on public streets, crossing at grade 19 streets, 2 street-car lines, and a swing bridge over the Erie Canal. The siding into the cotton mills has a switch connection with defendant's main track in Fay street, near Court street, a trifle more than a mile west of Genesee street; and between Genesee street and this siding there are, of the crossings mentioned, 7 streets, 2 street-car lines, and the Erie Canal. The cotton-mills siding is a short one, rising with a sharp grade to the floor of a covered shed over a coal trestle about 15 feet high, a spur from the siding running at grade along the mill storehouse. The loaded coal cars are pushed up on the trestle by the engine and the coal dropped through the trestle. It appears from the record that the switching service in question is performed under rather difficult conditions and at comparatively large expense.

For some time prior to 1904 defendant's charge for switching carloads of coal within its yard limits at Utica was \$5 per car. In 1904 the charge was changed to 30 cents per ton. At the date of the hearing its charge for switching carloads of dressed meat and live stock was \$5 per car, and for other commodities, including such articles as cotton, machinery, lumber, stone, brick, lime, cement, yarn, sheeting, etc., its switching charge was \$2 per car. By tariff (I. C. C.

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No. 3497) effective December 5, 1908, this latter charge was increased to \$3.50 per car. The switching service performed in connection with commodities taking the \$3.50 rate is similar to that performed for coal, except that generally such traffic is not placed upon a trestle, but delivered at a warehouse. The present switching charge approximates the cost of transferring coal from the New York Central yard to the cotton mill by wagon. One witness testified that 25 cents per ton would be a fair charge for so draying the coal, while another estimated that the minimum cost of such drayage would be 35 cents per ton. It was testified on behalf of defendant, and appears to be the fact, that 30 cents per ton is the customary charge throughout the territory east of the Niagara frontier (except in and about the city of New York) for switching coal from the tracks of one road to industries located on another road in the same switching district. The charge in question therefore is not local or exceptional, but the same as generally made in the cities and towns in that section of the country.

It appears that the coal delivered at the cotton mill during the period covered by the complaint was sold by Gilmore & Son, coal dealers at Utica, to whom it was consigned and who gave the New York Central orders for placing or switching of cars, paying to that company the freight and switching charges. Gilmore & Son also absorbed \$1 per car of the switching charges when such charges exceeded \$5 per car. They sold the coal at a delivered price per ton, the purchaser paying in addition to such price any switching charges in excess of \$6 per car, the aggregate amount absorbed by the line carriers and the vendor. It will thus be seen that the cotton mill, which is located on the Ontario & Western upward of a mile from the New York Central yard and on the other side of the canal, procured delivery of this coal at a cost for switching of 30 cents a ton less \$6 per car. As the 394 cars in question averaged  $26\frac{1}{2}$  tons per car the amount paid by the cotton mill averaged \$1.95 per car, or between 7 and  $7\frac{1}{2}$  cents per ton. If no part of this charge had been absorbed by Gilmore & Son the average cost to the cotton mill would have been \$2.95 per car.

Upon the facts in this case as above outlined we are constrained to hold that complaint can be made only of the excess of these switching charges above the \$5 per car absorbed by the line carriers, and that such excess has not been shown to be unreasonable. We leave out of account the \$1 per car absorbed by Gilmore & Son, for that is a matter of private agreement between them and their vendee, and consider the charges which the shipping public must pay under the terms of the tariffs established by the carriers. The conceded fact

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in this regard is that the coal received by the cotton mill during the period in question paid a switching charge which averaged only \$2.95 per car.

If the contention of complainant be sustained and this switching charge reduced to, say, \$3.50 per car, the switching charge applied on many other commodities, the industries on the Ontario & Western would be able to get Lehigh coal at the same cost as though located on the tracks of the New York Central (which we think they are not entitled to demand), unless, as might happen and probably would happen, the line carriers declined to continue the \$5 absorption, in which case the industries on the Ontario & Western would gain nothing by the reduction, for the net switching charge they now pay averages less than \$3.50 per car.

It seems plain to us that the tariffs above mentioned, the joint tariff of the line carriers and the switching tariff of defendant, are to be taken and read together. They are intended to supplement each other and their practical and legal effect is the same as one publication naming the aggregate rate from the Lehigh coal field to industries in Utica on the tracks of the Ontario & Western. In form and substance they comply with the tariff rules promulgated by the Commission, and they appear to be properly filed and posted. They provide a rate to Utica on this Lehigh coal of \$1.50 per ton when delivered on tracks of the New York Central, with an additional switching charge for Ontario & Western deliveries which is the excess of 30 cents a ton above \$5 per car. For the service performed that excess, whether measured by the amount which the cotton mill and Gilmore & Son paid on the 394 cars mentioned in the complaint, or compared with defendant's switching charges on other Utica traffic, is not found to be unreasonable. The facts disclosed in this record fail to show a violation of the act, and an order will be entered dismissing the complaint.

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No. 2975.

ROACH &amp; SEEBER COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY  
ET AL.

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*Submitted March 21, 1910. Decided April 4, 1910.*

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Rate of 15 cents per 100 pounds on butter boxes from Milwaukee to Waterloo, Wis., as applied to interstate shipments, found to be unreasonable. Rate on this commodity for the future should not exceed 9 cents per 100 pounds. Reparation awarded.

*G. M. Stephen* for complainant.

*William Ellis* for Chicago, Milwaukee & St. Paul Railway Company.

#### REPORT OF THE COMMISSION.

*KNAPP, Chairman:*

Complainant shipped between September 9 and December 21, 1908, three carloads of wooden butter boxes from Manchester, Vt., to Waterloo, Wis. The complaint alleges that these shipments moved from Manchester, N. Y., and the proper carriers were made defendants if the shipments had originated at that point. In point of fact they originated at Manchester, Vt., and all the carriers between that point and Milwaukee were not made defendants. However, under the circumstances disclosed by the record, this error is not material and may be disregarded. The expense bills indicate that two of the cars moved in connection with the Michigan Central Railroad and one car in connection with the Wabash Railroad. The rate via both routes from Manchester to Milwaukee is 31 cents, but via the Michigan Central there is a commodity rate of 31 cents on a minimum of 20,000 pounds, while via the Wabash the fourth class rate of 31 cents applies on a minimum of 16,000 pounds.

On the carload which arrived at Waterloo via the Michigan Central on December 12, 1908, a rate of 31 cents on a minimum of 16,000 pounds up to Milwaukee was charged, plus a rate of 15 cents on the actual weight of 16,000 pounds from that point to Waterloo. The

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charges on this carload should have been \$73.60 instead of the \$74.88 collected, and there was therefore an overcharge of \$1.28.

On the carload which arrived at Waterloo via Michigan Central on December 21, 1908, a rate of 31 cents on a minimum of 16,000 pounds up to Milwaukee was charged, plus a 15-cent rate on the actual weight of 16,000 pounds from that point to Waterloo. The charges on this carload should have been \$73.60 instead of the \$74.88 collected, and therefore there was an overcharge of \$1.28.

On the carload which arrived at Waterloo via the Wabash on September 9, 1908, a rate of 31 cents on a minimum of 16,000 pounds was assessed up to Milwaukee, plus a rate of 15 cents on the actual weight of 15,400 pounds from that point to Waterloo. The charges collected on this shipment were \$72.61. The actual weight of each of the above shipments exceeded the minimum then in effect from Milwaukee to Waterloo.

The complainant attacks the portion of the through rate applying from Milwaukee to Waterloo as excessive. The defendant Chicago, Milwaukee & St. Paul Railway Company objected to any evidence concerning this rate, on the ground that the Commission did not have jurisdiction of a rate wholly within the state of Wisconsin, but admitted that the movement of these shipments from Milwaukee to Waterloo was part of a through movement under through billing from Manchester to Waterloo. In view of this admission the contention is without merit.

Complainant contends that these butter boxes should be classified with wooden pails, tubs, kits, straight or mixed carloads, barrels, kegs, well buckets, or wooden drums under Class-D rate, minimum 24,000 pounds, to which a rate of 6 cents per 100 pounds was applicable between the points above named. The defendant Chicago, Milwaukee & St. Paul Railway Company states that these butter boxes could not be nested, and therefore were not analogous articles with commodities taking the Class-D rate. Most of the articles named can be nested, and those that can not are much heavier than butter boxes. These boxes hold from 3 to 5 pounds of butter, are made of thin wood and fitted with a tightly coopered cover and must be shipped in crates. It was admitted by complainant that they could not load to a minimum of 24,000 pounds which was provided for by the Class-D rate. Rarely, if ever, could they load to more than 16,000 pounds. Neither in manner of shipment or in weight are they analogous with commodities taking Class-D rates.

Under all the circumstances and conditions we find that the through rate made up of the combination rates on Milwaukee from Manchester, Vt., to Waterloo, Wis., is unreasonable, because the rate

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of the Chicago, Milwaukee & St. Paul Railway Company from Milwaukee to Waterloo of 15 cents per 100 pounds is excessive as applied to interstate shipments of butter boxes, and that a reasonable rate for the future on this commodity applicable to interstate shipments between the points named should not exceed 9 cents per 100 pounds on a minimum of not more than 16,000 pounds, which that defendant will be required to maintain for a period of not less than two years. Reparation will be awarded on this basis in the sum of \$27.90, with interest. No order will be made concerning the overcharge of \$2.56, but the carriers responsible will be expected to adjust the same.

An order will be entered accordingly.

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No. 2109.

WELLS-HIGMAN COMPANY

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY  
COMPANY ET AL.

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Submitted September 23, 1909. Decided April 4, 1910.

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Complaint dismissed because the aggregate charges upon which it was based were incurred by the deliberate action of complainant and because the record does not show facts upon which the Commission could determine what would have been reasonable rates at the times the movements occurred.

*H. C. Higman* for complainant.

*Martin L. Clardy, James C. Jeffery and C. C. P. Rausch* for St. Louis, Iron Mountain & Southern Railway Company.

*S. W. Moore and Fred H. Wood* for Kansas City Southern Railway Company.

## REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

Complainant is a corporation having its main office at St. Joseph, Mich., and its factory at Traverse City, in the same state. In the summer of 1908 complainant sold a large number of bushel baskets, amounting to eight carloads, at a delivered price to the Southern Orchard Planting Company at Horatio, Ark. Instead of billing the cars through to destination complainant consigned them to its agent at Memphis, Tenn., who received the shipment and paid the freight to that point. The rate from Traverse City to Memphis is not involved in this case.

At Memphis the cars were rebilled to Wynne, Ark., where another agent of the complainant received them, paid the freight to that point and again rebilled the cars, this time to the purchaser at Horatio. Apparently this was done to entitle the shipments to the rate established by the railroad commission of Arkansas from Wynne to Horatio. There was no joint through rate in effect at the time these cars moved either from Traverse City or from Memphis to Horatio. The cars arrived at Wynne between July 8 and July 11, and at  
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Horatio July 16 and 17. The total charges paid by complainant for the movement of these eight cars from Memphis to Horatio were \$1,348.75. The allegation of the petition is that a total charge of \$378.60 would have been a reasonable compensation for the services performed and reparation is prayed, in the sum of \$970.15.

If the cars had been billed through from Memphis to Horatio the rate would have been 53 cents from Memphis to Texarkana, plus 22 cents from Texarkana to Horatio, or a total of 75 cents per 100 pounds. Complainant in consigning to Wynne, paying the freight at that point, and rebilling thence to Horatio, was entitled to a rate of 20 cents from Memphis to Wynne, and, on intrastate movements, to a rate of 53 cents from Wynne to Horatio. This would have made an aggregate charge per 100 pounds of 73 cents, or 2 cents per 100 pounds less than the through rate based upon Texarkana; this difference in the rates suggests the reason for the complete control of the shipments assumed by complainant.

From Wynne four cars moved entirely within the state of Arkansas to destination, going by way of the Iron Mountain to Hope, thence by the Frisco to Ashdown, and thence by the Kansas City Southern to Horatio. Concerning this movement we have no jurisdiction and can make no order, but note that the carload weights assessed thereon were very much in excess of the minima lawfully applicable and very much higher than the actual weights in the cars. The other four cars moved from Wynne to Texarkana over the Iron Mountain and thence to destination over the Kansas City Southern, in the course of which latter movement they crossed from Arkansas to Texas and back again into Arkansas, the movement thereby coming within the terms of the act to regulate commerce. For this interstate haul on these four cars the defendants collected a total freight charge of \$660.35, based upon minimum weights aggregating 81,560 pounds and a through rate of 83 cents. Under the tariffs in effect at that time 61,880 pounds was the aggregate of minimum weights that should have been applied and rates of 72 cents from Wynne to Texarkana, plus 22 cents from Texarkana to Horatio, which, if applied, would have made a total charge of \$581.67. There appears to be, therefore, a straight overcharge of \$78.68. The Kansas City Southern tariff, I. C. C. No. 1270, supplement No. 54, under which the higher minima and the rate of 83 cents were assessed, did not become effective until August 29, 1908, sometime after the movement.

There is nothing in the record to show what rates from Memphis to Wynne and from Wynne via Texarkana to Horatio would be reasonable. Complainant contented itself with citing a commodity rate of 30 cents on baskets from Memphis to Clarksville, Ark., and insisted that no higher rate should be charged to Horatio. The rates

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can not very well be compared in view of the fact that the Clarksville rate is a commodity rate, whereas the rate from Memphis to Horatio is the fourth class rate, applicable to many articles, and the further fact that the distance to Clarksville is only 250 miles over one line, whereas to Horatio via Texarkana the distance is 338 miles over two lines.

Complainant made two distinct shipments; nevertheless it complains of the aggregate charges incurred unnecessarily by its own action. Had the shipments been billed through from Memphis to destination, very much lower charges would have applied. No specific complaint is made of the rate from Memphis to Wynne or of the interstate rate from Wynne to Horatio, and the record discloses no facts, in our judgment, which entitle complainant to relief, except for the overcharge above noted. An order will be entered accordingly.

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No. 2744.

FRIEND PAPER COMPANY

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS  
RAILWAY COMPANY.

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*Submitted March 3, 1910. Decided April 4, 1910.*

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Award of reparation for demurrage charges on the ground of unjust discrimination disallowed, upon the facts disclosed by the record.

*J. F. Dunifer* for complainant.

*O. E. Butterfield* for defendant.

## REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

This is a complaint that the charge by defendant of \$193 demurrage was unjustly discriminatory. It accrued during the period from July 28 to September 5, 1908, on cars containing coal, pulp, pulp wood, bleach, paper stock, and other materials loaded or unloaded by complainant, a manufacturer of pulp and paper at West Carrollton, Ohio, which point is located exclusively on the line of the defendant.

Defendant had in effect in the state of Ohio a rule applicable on state traffic May 15, 1908, and on interstate traffic May 20, 1908, which, among others, it had established by order of the railroad commission of the state of Ohio, and which provided:

If any patron elects, the carrier shall enter into an agreement with him to apply the so-called average plan in lieu of the provisions of Rules 3, 8, and 9 for the determination and settlement of car-service charges, the basis of the average to be forty-eight (48) hours, fractions of days not to be taken into account, a credit of one day in time to be given on each car loaded or unloaded within twenty-four (24) hours, such credit to be applied on cars detained more than forty-eight hours, no one car to be entitled to more than seven days free time; balance to be closed at the end of each calendar month.

On May 22, 1908, representatives of the Ohio railroads adopted a code of demurrage rules to be applied on interstate traffic which did not include the above rule. Defendant, by oversight, withdrew

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provision for the average plan on interstate traffic three days prior to the date agreed upon by such representatives, and before that date arrived the other carriers determined to retain the provision. It was the desire of defendant that its rules should conform to those of the other carriers, and effective September 5, 1908, it reestablished the rule. Later all lines eliminated it, and on the date of the hearing the average plan was applicable only to state traffic. The basis for the charge that complainant was subjected to unjust discrimination is the fact that other carriers in the state of Ohio, on the lines of which are located industries engaging in the same business as complainant, retained the provision for the average plan on interstate traffic during the period covered by the complaint. Defendant is willing to submit to an award of reparation if it may be legally made, and provided the Commission's determination that the complainant is entitled thereto does not involve a finding that the straight plan of demurrage is *per se* unjust and unreasonable.

The Commission indorsed and recommended the establishment on interstate transportation of the uniform demurrage code (which provides for the average plan), reported to the National Association of Railroad Commissioners by its committee on car service and demurrage. The question here is not as to the reasonableness of straight demurrage, nor does it involve the establishment of the average plan for the future, but whether complainant was subjected to unjust discrimination. Complainant has competitors located at Hamilton and Chillicothe, Ohio, the former reached by two and the latter by three carriers. The fact that these points are competitive and West Carrollton is not would indicate such dissimilarity of circumstances and conditions as might acquit the defendant of unjust discrimination if all these points were on its line, but a carrier can not be charged with giving preference or advantage to points which it does not serve.

If we correctly apprehend the situation which placed complainant at a commercial disadvantage with its competitors, the carriers in the state of Ohio had determined to combat the right of the railroad commission of Ohio to prescribe demurrage rules on interstate traffic. It was the intention of defendant to act in unison with all the carriers. Its premature action in eliminating the average plan and the non-action of the other carriers, coupled with the delay incident to the reestablishment of the rule, brought about the situation which resulted in the complaint. It is unfortunate that this train of circumstances caused loss to the complainant, but it does not afford a legal basis on which refund can be ordered.

The complaint must be dismissed, and it will be so ordered.

18 I. C. C. Rep.



No. 2801.

## SOUTHERN COTTON OIL COMPANY

v.

LOUISVILLE &amp; NASHVILLE RAILROAD COMPANY ET AL.

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*Submitted February 21, 1910. Decided April 4, 1910.*

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The initial carrier having quoted a published rate on cotton linters, issued bills of lading showing that rate, but neglected to advise the complainant that it was applicable only on shipments moving under a released valuation, and charges were consequently collected at a higher rate; *Held*, That under these circumstances the defendants had reasonable notice of the shipper's desire to have the benefit of the lower rate, and it was the duty of the defendants to have secured the shipper's signature to the released-valuation clause. Reparation awarded.

*H. W. B. Glover* and *T. A. Bosley* for complainant.

*Ed. Baxter* and *W. A. Northcutt* for Louisville & Nashville Railroad Company.

*A. H. Bright* for Wisconsin Central Railway Company and Minneapolis, St. Paul and Sault Ste. Marie Railway Company.

*E. B. Peirce* for Chicago & Eastern Illinois Railroad Company and Evansville & Terre Haute Railroad Company.

## REPORT OF THE COMMISSION.

**HARLAN, Commissioner:**

In this proceeding the complainant prays for reparation in the sum of \$42.85 upon two shipments of cotton linters from Montgomery, in the state of Alabama, to Minneapolis, in the state of Minnesota. The first shipment consisted of 49 bales, weighing 29,296 pounds, and was made on October 21, 1908. The second shipment was made on the following day and consisted of 51 bales of the aggregate weight of 31,901 pounds. Charges were collected at a combination rate of 81 cents, made up of a rate of 48 cents per 100 pounds from Montgomery to Evansville, plus a rate of 33 cents from the latter point to destination. It is admitted by the defendant that in forwarding the shipments over that route it became liable to the complainant as for a misrouting, the shipments having been received by it without routing

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H. C. C.

instructions. If it had forwarded the shipments through the Jeffersonville crossing, the legal through charges would have amounted to but 78 cents per 100 pounds; and on this basis the defendant is willing to make reparation to the complainant in the sum of \$18.36.

The complaint, however, rests upon another ground. Before tendering the shipments to the defendant the petitioner made inquiry as to its rate on cotton linters to the destination in question. The defendant admits that in responding it quoted a rate of 74 cents per 100 pounds. And this was, in fact, the combination rate through the Evansville gateway on cotton linters when released to a valuation of 2 cents a pound. The defendant, however, omitted to advise the complainant that the rate over that route was so limited. The complainant thereupon tendered the shipments to the defendant and bills of lading were issued on which the 74-cent rate was shown; but they contained no release clause signed by the shipper as required by the published tariffs.

The claim is resisted by the defendant on the authority of *Poor Grain Co. v. C., B. & Q. Ry. Co.*, 12 I. C. C. Rep., 418. While the Commission has consistently adhered to the doctrine announced in that case and must necessarily insist on the application of the legal rate, even though an erroneous rate has been quoted by the carrier and has entered into a commercial transaction as an essential factor, or has been accepted by a consignor as an inducement for offering his merchandise for carriage, it is clear that the case does not control a state of facts such as is disclosed upon this record. The 74-cent rate, the benefit of which the complainant demands, had been published in due form and was the legal rate on cotton linters when released as heretofore explained. The complainant is not in the position, therefore, of seeking the benefit of a rate that has not been legally established; on the contrary, it demands that the defendant shall not collect and retain more on these shipments than the amount of a lawfully published rate. The sole fact of significance that we find on the record is that the defendant quoted to the complainant a legal rate without advising it of the limitation attached to it, and issued bills of lading showing that rate without taking any steps to secure the indorsement by the complainant on the bills of lading of a released-valuation clause.

While the facts are not altogether analogous the case seems to come fairly within the spirit of an administrative ruling made on November 9, 1909. There the shipper indicated on the bill of lading that he was expecting the benefit of the released-valuation rate, but omitted to indorse across its face the special form of release required under the tariff rules of the carrier. We held that it was the carrier's duty to secure the shipper's signature to such a release when it had reasonable

notice of his desire to take advantage of the lower rate under a released valuation. In this proceeding the record shows that the carrier quoted the released rate and issued bills of lading which showed that rate. It also appears that the bills of lading had been prepared by the complainant and were tendered to the defendant with its shipments. Under such circumstances we think that the defendant not only intended the lower rate to apply, but had reasonable notice that the complainant wished the benefit of that rate. It was therefore the carrier's duty to secure the complainant's indorsement on the bills of a released-valuation clause. See also *Salomon Bros. & Co. v. N. O. & N. E. R. R. Co.*, 15 I. C. C. Rep., 332. It may be well to add that cotton linters move almost universally under a released-valuation rate.

Upon the record we find that the complainant is entitled to reparation as prayed for, with interest; and it will be so ordered.

18 I. C. C. Rep.

No. 2973.

H. LORLEBURG COMPANY

v.

NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY  
ET AL.

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Submitted February 19, 1910. Decided April 5, 1910.

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Rates assessed on four shipments of gasoline stoves and parts from Lorain, Ohio, to Oconomowoc, Wis., and on nine shipments of radiators, hot-water heaters and parts from Detroit, Mich., to Oconomowoc, Wis., found unreasonable. Reparation awarded.

*G. M. Stephen* for complainant.

*S. L. Strauss* for Grand Trunk Western Railway Company.

*William Ellis* for Chicago, Milwaukee & St. Paul Railway Company.

## REPORT OF THE COMMISSION.

## LANE, Commissioner:

Complainant challenges the lawfulness of the charges collected by the defendants, the New York, Chicago & St. Louis Railroad Company and the Chicago, Milwaukee & St. Paul Railway Company, for the transportation of four shipments of gasoline stoves and parts aggregating 1,835 pounds in weight from Lorain, Ohio, to Oconomowoc, Wis., on various dates between June 17, 1908, and June 14, 1909. Upon three of these shipments the lawful rate of 86 cents per 100 pounds was assessed and collected, while a rate of 80 cents per 100 pounds was erroneously applied on the remaining shipment. Charges in the total amount of \$15.80 were collected. At the time of movement there was in effect via the lines of these defendants a combination of rates through Duplainville, Wis., yielding a total through charge of 61 cents per 100 pounds, and the rates assessed and collected are alleged to be unjust and unreasonable to the extent that they exceed this figure.

The complaint also puts in issue the lawfulness of the charges collected by the defendants, the Grand Trunk Western Railway Company and the Chicago, Milwaukee & St. Paul Railway Company, 18 I. C. C. Rep.

for the transportation of nine shipments of iron radiators, hot-water heaters and parts, aggregating 22,407 pounds in weight, from Detroit, Mich., to Oconomowoc, Wis., on various dates between September 22, 1908, and March 5, 1909. At the time of shipment the rate lawfully applicable was 51 cents per 100 pounds in accordance with which charges were collected, or in the total amount of \$109.81. This rate is alleged to be unreasonable to the extent that it exceeds the combination of rates through Duplainville yielding a total through charge of 39½ cents.

Duplainville is situated on the main line of the defendant Chicago, Milwaukee & St. Paul Railway Company between Chicago and St. Paul, some 17 miles west of Milwaukee. It is the most western point of a group taking Milwaukee rates. For this reason the Duplainville combination yields a lower charge to Oconomowoc than the combination upon other points in that vicinity.

We find that the rates assessed and collected by defendants, the New York, Chicago & St. Louis Railroad Company and the Chicago, Milwaukee & St. Paul Railway Company, on the shipments of gasoline stoves and parts from Lorain, Ohio, to Oconomowoc, Wis., were unjust and unreasonable to the extent that they exceed the aforesaid combination upon Duplainville, or 61 cents per 100 pounds. We find further that the rate to be observed by the defendants in the future should not exceed that amount. Reparation will be awarded in the amount of \$4.61, with interest.

We find further that the rate assessed and collected by the defendants, the Grand Trunk Western Railway Company and the Chicago, Milwaukee & St. Paul Railway Company, on the shipments of iron radiators, hot-water heaters and parts, from Detroit to Oconomowoc, was unreasonable to the extent that it exceeds the aforesaid combination of rates upon Duplainville, or 39½ cents per 100 pounds. We find further that the rate to be observed in the future should not exceed that figure. Reparation will be awarded in the amount of \$21.30, with interest.

An order will be entered accordingly.

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No. 2162.  
S. H. KNOX  
v.  
WABASH RAILROAD COMPANY.

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*Submitted June 4, 1909. Decided April 5, 1910.*

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Rule in Official Classification providing that articles too long to be loaded in a standard 36-foot box car through the side door thereof shall be charged at actual weight, subject to a minimum charge on the basis of 4,000 pounds, found unreasonable and reparation awarded.

*W. D. Morton* for complainant.

*William L. Marcy* for defendant.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

Complainant challenges the lawfulness of the charges assessed and collected by the defendant for the transportation of a crated sign-board from Chicago, Ill., to Wabash, Ind., on November 23, 1907. The sign in question was made of redwood and was some 22 feet 9½ inches long, 33½ inches wide, and 5½ inches thick. Its weight was about 400 pounds. The length of the sign made it impossible to elbow it through the side door of a 36-foot car and a 40-foot car was therefore required. Charges were collected in the total amount of \$11.40, or at the rate of 28½ cents per 100 pounds, based upon a weight of 4,000 pounds. Four thousand pounds was taken as a basis in assessing charges by authority of Rule 7-C of the Official Classification effective at the time of shipment providing as follows:

Unless otherwise specified in the classification articles too long to be loaded in a standard 36-foot box car through the side door thereof shall be charged at actual weight and class rate for each shipment to one consignee, provided, that in no case shall the charge for same be less than 4,000 pounds at first class rates.

The complainant contends that this rule is unjust and unreasonable, and asks reparation in the amount of \$10.26, the difference between the amount collected and the amount which would accrue if charges were assessed in accordance with the actual weight.

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Subsequent to the movement of this shipment, the rule in question was amended to read as follows:

Unless otherwise specified in the classification, when articles are loaded on a flat or gondola car, on account of their being too long to be loaded in a box car through the side door thereof, they shall be charged at actual weight and class rate for each shipment for one consignee, provided, that in no case shall the charge for same be less than for 4,000 pounds at first class rate.

It appears, therefore, that under the rule now in effect a shipment of this character would be transported at actual weight, the penalty being imposed only upon articles which are too long to be loaded through the side door of a box car.

We find that the defendant's rule requiring shippers to pay charges upon a minimum weight of 4,000 pounds for the carriage of articles too long to be loaded through the side door of a 36-foot box car was unjust and unreasonable. Reparation will be awarded in the amount of \$10.26, with interest from the date of payment of charges.

It will be ordered accordingly.

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No. 2763.

T. B. LITTELL

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY ET AL.

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*Submitted March 2, 1910. Decided April 4, 1910.*

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The through fares between Cairo, Ill., and Waco, Tex., having been reduced pending a contest in the courts as to the validity of the 2-cent per mile legislation in Arkansas and Missouri, were later restored when the enforcement of those statutes was enjoined. Because of its unusual size and the complications involved the defendants were unable to reprint the schedule showing the restored northbound fares until some weeks after the southbound fares had been raised to their former level; *Held*, That although the complainant, under these circumstances, had enjoyed the advantage of the lower rate on the northbound journey that fact affords no just ground for giving him the advantage of a like rate on the southbound journey. Reparation denied and complaint dismissed.

*T. B. Littell* for complainant in person.

*S. H. West, Roy F. Britton, D. Upthegrove and Scott, Sanford & Ross* for defendants.

#### REPORT OF THE COMMISSION.

*HARLAN, Commissioner:*

On May 11, 1909, the complainant purchased a one-way ticket from Waco, in the state of Texas, to Cairo, in the state of Illinois, and was charged by the defendants the legal fare of \$15.95. When he came to return from Cairo to Waco, on June 10 of the same year, he was forced to pay \$19.85, which was the legal fare in that direction. This fare is complained of as unreasonable and excessive to the extent that it exceeded the fare then current in the opposite direction, and reparation is demanded in the sum of \$3.90. The complainant offered on the hearing no evidence in support of his complaint other than the mere statement of the fact that the rate complained of exceeded the rate then in effect in the opposite direction.

From the pleadings and from the defendants' testimony it appears that prior to 1907 the fare in either direction between Waco and Cairo was based, at the rate of 3 cents per mile, on the short-line mileage of 653 miles, over the Cotton Belt system to Texarkana and the Iron Mountain beyond, plus 25 cents for the river transfer from Bird's

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Point to Cairo. The fare thus made up amounted to \$19.85. On April 10, 1907, passenger fares within the state of Arkansas were fixed by the state authorities at 2 cents per mile, and in June, 1907, a law went into effect in the state of Missouri fixing a maximum fare of 2 cents per mile for passengers traveling within that state. Shortly thereafter the defendants reduced all their through fares on passenger traffic across Arkansas and Missouri, and this resulted in a reduction of their fares between Cairo and points in Texas to the basis of 3 cents per mile in Texas plus 2 cents per mile between Texarkana and Bird's Point; the 25-cent river transfer charge being added. This made a fare of \$15.95 between Cairo and Waco in each direction. In the meantime proceedings had been instituted, by the various railroad companies whose fares were involved, to contest the validity of the 2-cent per mile laws, and on September 3, 1908, the enforcement of the Arkansas law was enjoined by the courts. The carriers thereupon, on October 19, 1908, advanced their fares within that state to 3 cents per mile. On March 8, 1909, a similar injunction was granted by the courts against the state of Missouri, and the fares within that state were restored to the 3-cent basis on April 10, 1909.

The northbound interstate fares were carried in what is known as the Texas rate sheet, one of the largest and most complicated schedules in force in the whole country, containing more than 500 pages. This schedule, at the time in question, was in a rather unsatisfactory condition and not in conformity with the requirements of the Commission. The carriers deemed it advisable therefore to reissue the entire schedule. The work was promptly undertaken and a large force of rate clerks are said to have been engaged on it from January 6 to April 27, 1909, when a part of the copy was sent to the printer. From May 5 to July 5 four clerks were engaged in correcting the proof sheets. Notice of thirty days being required under the law to effect changes in rates it was not until August 25, 1909, that the northbound fares to Cairo from Texas points of origin, including Waco, were restored to their former basis. On the other hand the southbound fares were published in small tariff schedules that could readily be reissued, the fare from Cairo to Waco being in a schedule of but eight pages. The southbound fares were therefore promptly restored, the fare from Cairo to Waco being reestablished by the defendants at \$19.85 on May 10, 1909, or just one day before the complainant began his northbound journey. For some months, therefore, the southbound fares to Texas destinations were materially higher than the northbound fares between the same points, due, as explained, to the inability of the defendant carriers to reprint their northbound schedules as promptly as the southbound tariffs were readjusted. The fare in either direction is now \$19.85.

The complainant does not attack the reasonableness, in and of itself, of the fare that he was required to pay when returning from Cairo to Waco. His complaint rests wholly upon the fact that when he paid \$19.85 for his journey from Cairo to Waco the fare from Waco to Cairo was still \$15.95, that being also the fare that he had paid earlier in the summer for the northbound trip. We find in these facts no basis upon which to grant the relief prayed in the petition. The lower rate on the northbound journey resulted to the complainant's advantage, but this affords no ground, under the facts here shown of record, for an order giving him the same advantage on the southbound journey. Such an order would certainly not be justified upon a record absolutely bare of any proof that the southbound rate was unreasonable. It may be that a fare in one direction that is higher than the return fare between the same points would appear to the average traveler to be unreasonable. But so far as the record shows this is not a case of an unreasonable southbound fare but of a northbound fare that was temporarily lower than was intended. The complainant paid for his southbound journey the fare paid by all others traveling at that time as well as by those who travel in that direction at this time. This is also the fare now required of travelers northbound from Texas points.

In a number of decisions the Commission has held that the mere fact that the rate or fare in one direction exceeds the rate or fare between the same points in the opposite direction is not a controlling test of the unreasonableness of the higher fare. Nor does this in itself necessarily constitute an unreasonable discrimination. *MacLoon v. Boston & Maine R. R. Co.*, 9 I. C. C. Rep., 642; *Hewins v. N. Y., N. H. & H. R. R. Co.*, 10 I. C. C. Rep., 221.

The complaint must be dismissed and it will be so ordered.

18 I. C. C. Rep.

No. 2373.

SPRECKELS BROTHERS COMMERCIAL COMPANY

v.

MONONGAHELA RAILROAD COMPANY ET AL.

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No. 2407.

SAME

v.

SAME.

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*Submitted January 25, 1910. Decided April 4, 1910.*

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1. In case No. 2373 on a claim for reparation on two carload shipments of coke from Leckrone, Pa., to Los Angeles, Cal., it appears that the shipper directed the routing; *Held*, That under such circumstances no reparation should be awarded.
2. In case No. 2407 it is established that the Pennsylvania Railroad Company mis-routed a carload shipment of coke from West Brownsville, Pa., to Los Angeles, Cal. Carrier required to make reparation.

*G. M. Stephen* for complainant.

*Charles B. Fernald* for Monongahela Railroad Company; Pennsylvania Railroad Company; Pennsylvania Company; Pittsburg, Cincinnati, Chicago & St. Louis Railway Company; and Vandalia Railroad Company.

*E. B. Peirce* for Chicago, Rock Island & Pacific System.

*F. C. Dillard* for Southern Pacific Company and El Paso & Southwestern Railroad Company.

*Baker, Botts, Parker & Garwood* for Galveston, Harrisburg & San Antonio Railway Company.

*F. C. Dillard* and *J. P. Blair* for Morgan's Louisiana & Texas Railroad & Steamship Company.

*A. P. Humburg, C. C. Cameron, and R. Walton Moore* for Illinois Central Railroad Company.

#### REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

These complaints were heard together, and while they present different facts they may be disposed of in one report.

18 I. C. C. Rep.

In No. 2373 it appears that in May, 1907, complainant shipped to itself at Los Angeles, Cal., from Leckrone, Pa., two carloads of coke weighing in the aggregate 96,750 pounds on which the defendants collected charges of \$790.45, or \$16.34 per ton. It is alleged that this amount was unreasonable to the extent that it exceeded \$10.50 per ton, and reparation in the sum of \$282.51 is asked accordingly.

It is stated by complainant that before these shipments were made its agent communicated with the local agent of the Southern Pacific at Los Angeles, Cal., and was informed that just at that time there was congestion of traffic at Chicago, and the suggestion was made that the shipments be routed via New Orleans. Complainant was informed, so it is alleged, that the rate was the same via New Orleans as via Chicago, and thereupon routed the shipments via New Orleans. There was and is no through rate via New Orleans and therefore the shipments moved on the combination of local rates which resulted in the alleged excessive charges.

The Southern Pacific denies that complainant was informed by its local agent at Los Angeles or by any other agent that the rate via New Orleans was the same as via Chicago, but under repeated rulings of the Commission the fact is immaterial. If the shipper is in doubt about the rate he can tender the traffic to the carrier without routing instructions and thus be entitled to the lowest rate even though the carrier divert the shipment because of congestion or other causes from the usual route or the one to which the lowest rate applies.

Complainant sought to show that the rate via New Orleans was excessive in view of the rate via Chicago and in view of rates from other coke-producing points to Los Angeles, but these comparisons alone—and nothing more appears in the record—are not sufficient to establish the unreasonableness of the combination of rates in force over the route by which the shipments in question moved. This case is not distinguishable from many others in which the Commission has denied reparation because the routing was directed by the shipper, and the complaint must therefore be dismissed.

In case No. 2407, in which complaint was filed April 23, 1909, it appears that complainant routed a carload shipment of coke weighing 46,100 pounds via the Pennsylvania Company, Chicago, Rock Island & Pacific Railway, and Southern Pacific, from Grays Landing, Pa., to Los Angeles, Cal., on September 4, 1907. The agent of the Pennsylvania Railroad Company at West Brownsville, Pa., where the shipment was weighed and billed, by mistake routed it via St. Louis. There is no dispute as to the facts in this case. It presents simply a misrouting by the Pennsylvania Railroad Company. Under

the Commission's rulings that company is responsible for the error and must make reparation to the shipper for the resulting overcharge.

The charges exacted on this shipment were  $66\frac{1}{2}$  cents per 100 pounds. Had it been properly routed via Chicago the charges would have been  $52\frac{1}{2}$  cents, or a difference of 14 cents per 100 pounds, and complainant is therefore entitled to an award of reparation from the Pennsylvania Railroad Company in the sum of \$64.54, with interest.

Orders will be entered accordingly.

18 I. C. C. Rep.

No. 2995.

HOLLINGSHEAD &amp; BLEI COMPANY

v.

PITTSBURG &amp; LAKE ERIE RAILROAD COMPANY ET AL.

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Submitted March 15, 1910. Decided April 4, 1910.

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Direction by a shipper that a shipment be sent from Cleveland, Ohio, to Menominee, Mich., all rail, does not impose on carriers the duty of transporting such shipment via an across-lake route, when both rates are shown in the tariff, although via the latter route a lower rate is applicable.

*George F. Blei* for complainant.

*H. A. Taylor* for the Erie Railroad Company and Chicago & Erie Railroad Company.

*S. A. Lynde* for Chicago & North Western Railway Company.

## REPORT OF THE COMMISSION.

*KNAPP, Chairman:*

November 18, 1907, complainant caused to be shipped from West Pittsburg, Pa., to Cleveland, Ohio, a carload of hoop steel. The weight of the shipment was 38,441 pounds. It was consigned to the complainant at Cleveland, routed via Pittsburg and Lake Erie, care Erie, care Detroit & Cleveland Navigation Company. November 19, 1907, complainant, by letter, instructed the Detroit & Cleveland Navigation Company to reconsign the car on its arrival at Cleveland to Charles Hornick, Menominee, Mich., via boat line. Complainant was advised by the navigation company that boat service to Menominee had been suspended for the season and was asked for further disposition of the shipment. November 21, 1907, complainant directed the navigation company to give the Erie Railroad Company at Cleveland instructions to forward the shipment to Menominee via all rail and by the route to which the lowest through rate from West Pittsburg to Menominee applied. The shipment moved all rail via Chicago at a rate of 33½ cents per 100 pounds, which was collected. There is no question that the rate charged was the rate provided by tariffs of defendants over the route the shipment moved.

It is asserted by complainant that it was the duty of the Detroit & Cleveland Navigation Company to notify it that there was in effect an across-lake route from Cleveland to which a 17-cent rate applied. This rate, added to the rate 5 cents from West Pittsburg to Cleveland, would have made the total charge for the through movement 22 cents. Reparation, represented by the difference between 33½ cents, the amount collected, and 22 cents, is asked.

The instructions of complainant were to forward the shipment via all rail. In accordance therewith the shipment was sent via an all-rail route from Cleveland.

It is the contention of complainant that its direction to the navigation company to forward the shipment all rail over the route to which the cheapest rate was applicable meant the across-lake route. To this we can not give our assent. Rule 70 of Tariff Circular 15-A (Rule 214, Conference Rulings Bulletin No. 4) contemplates that, where rail-and-water and all-rail rates are applicable to a shipment the shipper shall designate which of the two he desires, and that the agent of the carrier shall secure such designation from the shipper. Rule 190, Conference Rulings Bulletin No. 4.

There is no question in this case that the navigation company was instructed to direct the Erie company to forward the shipment "all rail" and that these instructions were followed. The evidence establishes that there is no accepted meaning of the phrase "all rail" which makes it apply to "across-lake" shipments by car ferry. The tariffs of defendants make rates "all rail" and "across lake" in different columns in the same publication. Traffic officials of defendants testified that in case a shipper directs a shipment to be carried between two points "all rail" such shipment is never sent across lake, although the tariff prescribing the rates names an "all-rail" rate and an "across-lake" rate, and the latter is the lower.

Under these circumstances we are constrained to hold that the shipper's instructions in this case to forward the shipment all rail absolves the carriers from any liability for a higher charge than would have been assessed had the shipment moved across lake.

The complaint will therefore be dismissed.

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No. 3010.  
SAGE & COMPANY  
v.  
ILLINOIS CENTRAL RAILROAD COMPANY.

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*Submitted February 8, 1910. Decided April 4, 1910.*

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Demurrage charges alleged to have been unreasonable found to have been rightfully collected under the circumstances.

*D. A. Sage* for complainant.

*A. P. Humburg* for defendant.

REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

November 12, 1907, a carload of soft coal was consigned by the United Fourth Vein Coal Company at Linton, Ind., to complainant at Chicago, Ill. The shipment moved to Chicago over the line of the Southern Indiana Railroad. November 13, 1907, complainant gave a reconsigning order to the Southern Indiana directing that the car be forwarded to one W. B. Hoyt, Burlington, Ill., via the Illinois Central. This was a fictitious billing, there being no person by the name of W. B. Hoyt at Burlington. It is not clear why this fictitious reconsignment was made. It is stated by complainant that it was necessary and customary to issue such billing in order to get the coal through the Chicago gateway—that is to say, it was necessary to resort to such tactics with connecting lines in Chicago to get coal to destination, which certain carriers refused to permit if the actual consignees were disclosed. On the same date the fictitious billing was sent to the Southern Indiana complainant addressed the local agent of the Illinois Central at Chicago the following letter:

The Southern Indiana Railroad will deliver to your road S. I. car No. 3062, soft coal, consigned to W. B. Hoyt, Burlington, Ill., via your line. On delivery of car to your line kindly have billing on contents changed to read Brunner Brothers, Charles City, Iowa, via your line, applying through rate from Chicago to Charles City.

November 25, 1907, complainant traced the car to Burlington, where it was awaiting delivery. On that date instructions were given defendant to forward it to Charles City. The defendant thereupon

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demanded \$2 reconsigning charge and \$5 demurrage before it would move the car. This amount was paid under protest. It is alleged in the complaint that the \$5 demurrage charge is unreasonable and reparation in that sum is asked.

The shipment was received at the Hawthorne yards of the defendant in Chicago November 17, 1907, from the Chicago Terminal Transfer Railroad on transfer billing. This billing shows "U. 4th. V. Co." as the consignor and "W. B. Hoyt, Burlington, Ill.," as consignee. The billing shows that the transfer company had received the car at Robey street, Chicago, but does not disclose that it came from the Southern Indiana, nor does the name of complainant appear on the billing. November 18, 1907, defendant forwarded the car to Burlington and issued its own waybill, made out from the billing of the transfer company. November 21, the station agent at Burlington notified the local agent at Chicago that delivery could not be made and asked for advice as to disposition. The matter was taken up at once with the terminal company. Upon receipt of reconsigning orders from the complainant and payment of reconsignment and demurrage charges the car was transported to Charles City.

It is insisted by defendant that none of its agents received the letter mailed by complainant on November 13 and that it could not have been acted upon, if it had been received, as it was not accompanied with payment of reconsigning charges in conformity with its tariff provisions. It is urged by complainant that because it had previously made reconsignments of coal under similar circumstances without prepayment of charges, the reconsignment should have been made in this case with charges to follow. The evidence does not establish that since January 15, 1907, when the tariff requiring prepayment of charges became effective, complainant had made a reconsignment under similar circumstances. However this may be, it does not appear from the record that the reconsigning order of complainant on November 13 ever reached the defendant.

We are of opinion that, under all the circumstances, the defendant used due diligence with respect of the shipment in question and that the demurrage charges were rightfully collected.

The complaint will be dismissed.

18 I. C. C. Rep.

No. 2753.

F. R. PENN TOBACCO COMPANY

v.

OLD DOMINION STEAMSHIP COMPANY ET AL.

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Submitted March 19, 1910. Decided April 4, 1910.

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1. The Commission again expresses its appreciation of the importance of the principle that a reduction in rates, standing by itself and unaccompanied by other facts of convincing character, ought not to be accepted either as proving or necessarily tending to prove that previous higher rates were unreasonable; and also its appreciation of the principle that carriers ought not to be discouraged in their efforts to meet the views of shippers by making rate reductions and then being compelled to pay reparation on previous shipments on the basis of the lower new rate.
2. When, however, the rate actually collected on raw sugar from New York to Reidsville, N. C., is conceded by the defendants to have been "relatively out of line" and "wrong," when considered in connection with the rate then in effect to Winston-Salem and Martinsville, Reidsville being shortly thereafter grouped with those two points under a common rate even lower than the rate collected, the Commission is forced to the conclusion that the latter rate was unreasonable and excessive. Reparation awarded.

*W. R. Perkins* for complainant.

*R. Walton Moore* for defendants.

#### REPORT OF THE COMMISSION.

**HARLAN, Commissioner:**

In this proceeding the complainant seeks reparation on 15 car-loads of raw sugar, in single sacks, shipped by it during the period from August, 1907, to April, 1909, from New York City by water to Norfolk and thence by rail to Reidsville, in the state of North Carolina. The shipments weighed in the aggregate 529,633 pounds, and the total charges collected at the joint through fourth class rate of 40 cents per 100 pounds amounted to \$2,118.55. Reparation is demanded on the basis of 26½ cents per 100 pounds, that being the through commodity rate subsequently established on this traffic between the points in question.

The claim was earnestly contested by the defendants on the ground that the 40-cent rate was a reasonable rate in and of itself,

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and on all other grounds. It was insisted that the rate was subsequently reduced only because the complainant had requested a reduction; that the request was accompanied by no suggestion that the complainant would afterwards ask reparation on past shipments; and that the reduction was voluntarily made by the defendants and therefore comes within the principle announced in *Ottumwa Bridge Co. v. C., M. & St. P. Ry. Co.*, 14 I. C. C. Rep., 121, and *Menefee Lumber Co. v. T. & P. Ry. Co.*, 15 I. C. C. Rep., 49, where the Commission denied reparation and commented on the danger of a course of action on its part in such cases that would lead carriers to a conviction that they could not voluntarily reduce their rates without subjecting themselves to the risk of being required to pay reparation on past shipments under the higher rate.

The record shows that raw sugar is used in the manufacture of plug tobacco. The sugar used by the complainant ordinarily moves from New York by the Old Dominion Line to Norfolk and thence by rail to Reidsville. Plug tobacco is also manufactured at Martinsville, in the state of Virginia, and more extensively at Winston-Salem, in the state of North Carolina. The former place is about 248 miles from Norfolk by the short line; Winston-Salem is about 282 miles; and Reidsville is about 233 miles distant from Norfolk. The companies so engaged at both Martinsville and Winston-Salem are largely owned or otherwise controlled by the American Tobacco Company. This is true also of the tobacco companies at Reidsville, including the complainant.

The history of the rates for the transportation of raw sugar in single sacks from New York to these three points, as developed at the hearing, shows that the Norfolk & Western first reached both Martinsville and Winston-Salem, and the rate over that route, at least so far back as 1901, was 29½ cents per 100 pounds. This was a joint through commodity rate, and it was met by the defendants, the Southern Railway Company, as we were informed at the hearing, having been built into both points some time after the extension there of its competitor. Reidsville, however, is a noncompetitive point on the Southern Railway, and the rate from New York to that point, so far back as December, 1901, was the fourth class any-quantity rate of 40 cents per 100 pounds. This rate was maintained continuously until May 15, 1909, when, at the request of the complainant, a reduction was made, the defendants publishing a commodity rate of 26½ cents, or 3 cents lower than the rate then in effect over the defendant lines to Winston-Salem and Martinsville.

The principal and only witness that testified for the defendants at the hearing said that it had been the intention of the defendants to put Reidsville on a rate parity with the other two points, but instead

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of establishing the 29½-cent rate to Reidsville a rate clerk, erroneously interpreting his instructions, fixed the rate on the date last mentioned at 26½ cents. When asked by counsel for the defendant whether there were any additional reasons for making a rate reduction at that time, the defendants' witness explained that when the complainant called the matter to the attention of the defendants and they had looked into the rate adjustment it was found that the rate to Reidsville was relatively "out of line" and "wrong."

Upon the argument, following the conclusion of the testimony, the defendants insisted that the complainant, in whose behalf no witness was called and no testimony offered other than the expense bills and the tariff history, had wholly failed to show that the rate actually exacted was an unreasonable rate; that there was nothing in the record to show that it was otherwise than a reasonable rate; and nothing in any rate comparisons that had been offered or could be offered to lead the Commission justly to the conviction that the 40-cent rate was a discriminatory rate. It was asserted that the reduction had been made simply to meet the views of the complainant and not upon any belief by the defendants that the prior rate was unreasonable and excessive; that the defendants' rates to Winston-Salem and Martinsville had been shown to have been fixed by the Norfolk & Western and therefore afforded no basis for testing the defendants' rate to Reidsville, which was a noncompetitive point. And finally it was asserted that carriers ought not to be discouraged in their efforts to meet the views of their shippers by making rate reductions and then having the new rates applied as a basis for compelling them to pay reparation on previous shipments under higher rates.

In the cases above mentioned the Commission has shown its full appreciation of the importance of the principle that a reduction in rates, standing by itself and unaccompanied by other facts of a convincing character, ought not to be accepted either as proving or as necessarily tending to prove that the previous higher rate was an unreasonable and excessive rate. But the reasons for making rates and for changing them, and more particularly for reducing them, rest largely in the minds of the rate makers, and all must concede the weight and force to be attached to the explanations given by such officials for their actions in that regard. When questioned by the Commissioner who heard the testimony as to the meaning of his statement that the Reidsville rate was "relatively out of line" and "wrong" the rate witness of the defendants answered by saying that—

Relatively, Mr. Commissioner, we found that a rate of 40 cents on this sugar to Reidsville was out of line with the rate of 29½ cents to these competing points in near-by territory.

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The reduction therefore was not made simply because the complainant had requested a reduction, but because the Reidsville rate on investigation had been found to be a defective rate. Giving to the language of the witness the ordinary meaning of the words used, we can arrive at no other conclusion than that when their attention had been called to the Reidsville rate the defendants reached the conclusion that it was a wrong rate in the sense that it was excessive and relatively out of line when considered in connection with the rates to Winston-Salem and Martinsville. And if it was relatively out of line and wrong and not a proper rate at that time we see no grounds upon which we may fairly hold that it was not subject to the same criticism when the shipments in question moved. The fact that on August 18, 1909, the defendants put in effect not only to Reidsville, but to Winston-Salem and to Martinsville as well, a commodity rate of 25 cents per 100 pounds on a minimum weight of 40,000 pounds, and that this is the rate now in effect to the three points, must be accepted as an expression of a conviction on the part of the defendants that Reidsville ought to be grouped with the other two points with respect to this traffic. And this apparently was the view of the only witness that testified for the defendants.

In concluding his argument counsel for the defendants contended that the record was absolutely barren of any proof that the complainant had been injured in the rates collected, and in this connection he referred to the fact that while the complainant had a separate corporate existence it was actually owned by the American Tobacco Company, as was the case also with its alleged competitors at Martinsville and Winston-Salem. Counsel contended therefore that, inasmuch as all the companies were owned or controlled by one interest, the Reidsville company could not be said to have been injured in the rate exacted on the sugar shipped to that point, there being no real competition between any of the companies. This suggestion is based on the theory that actual competition was necessary in order to produce undue discrimination in rates. It overlooks, however, the requirements of section 1 that all rates shall be reasonable. If the rate exacted was unreasonable, it must necessarily follow that the complainant, even though owned and controlled by the same interest that owns and controls the companies at the other two points, suffered an injury to the extent that the rate demanded exceeded a reasonable rate.

Under all the facts shown of record we are forced to the conclusion that the rate collected on the shipments in question was an unreasonable and an excessive rate, and we so find. We see no ground, however, upon which we would be justified in awarding

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reparation on the basis of the 26½-cent rate, as demanded in the petition. The record, in our judgment, satisfactorily shows that Reidsville, so far as this traffic is concerned, ought to be grouped with Winston-Salem and Martinsville. We find, therefore, that the complainant is entitled to reparation, with interest, on the basis of the rate of 29½ cents then in effect to Winston-Salem and Martinsville; and that for the future the rate on raw sugar over the route in question to Reidsville ought not to exceed the rate contemporaneously in effect to Winston-Salem and Martinsville.

An order may be entered in accordance with these findings.

18 I. C. C. Rep.

No. 2290.

W. P. FULLER & COMPANY

v.

SOUTHERN PACIFIC COMPANY ET AL., AND TEN OTHER CASES DISPOSED OF IN THE ORDER ENTERED HEREIN, WHICH CASES ARE INDICATED BY DOCKET NUMBERS AS FOLLOWS: 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, AND 2413.

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*Submitted March 11, 1910. Decided April 4, 1910.*

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Tariff rate of \$1.25 per 100 pounds was correctly applied by defendants on complainant's shipments of "rough rolled, ribbed, or wired skylight glass." Complainant's contention that correct rate should have been \$1.10 per 100 pounds under the tariff for "skylight glass, n. o. s." not sustained. Complaints dismissed.

*Charles Clifford* for complainant.

*T. J. Norton* and *E. W. Camp* for Atchison, Topeka & Santa Fe Railway Company.

*P. F. Dunne*, *F. C. Dillard*, and *C. W. Durbrow* for Southern Pacific Lines.

#### REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The above complaints were heard at the same time. They all involve the question of alleged overcharges on carload shipments of rough rolled, ribbed, and wired skylight glass in packages from Dunbar, Washington, and Allegheny, Pa., to San Francisco, Cal. Reparation is asked in each complaint. The various shipments did not move over the same route, but the question presented is the same with respect to each complaint and they will all be disposed of in one report.

The shipments involved, amounting to more than 100 carloads, were made between January 1, 1907, and August 10, 1907. The claims were presented informally to the Commission March 9, 1908. The shipments consisted of rough rolled, ribbed, or wired skylight glass. Some of the glass was ribbed, as well as wired, and a small part of it was ribbed without being wired. The defendants exacted a rate of \$1.25 per 100 pounds. Complainant contends that the tariffs of defendants provided for a rate of \$1.10 per 100 pounds on skylight glass, and that any charge in excess of the latter rate is unlawful.

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An examination of supplements to Westbound Transcontinental tariffs, effective from November 10, 1904, to March 5, 1906, shows that the rate applicable to shipments of the character involved between the points named was \$1.10 per 100 pounds. On the last-named date the tariff read as follows:

Glass, rough rolled, wired (wired plate glass excepted), or ribbed, not colored, also vault or sidewalk lights, not colored, in packages, O. R. B., minimum weight 30,000 pounds, \$1.10.

The above description and rate were carried in the tariff until August 27, 1906, at which time supplement 35 to Transcontinental Westbound tariff I-G, I. C. C. No. 375, became effective, which canceled the preexisting rate and provision and contained the following provision and rate:

Glass, white or colored, decorated, cracked, enameled, figured, ribbed, ground, stained, wired (wired plate glass excepted), partition, and cathedral (excluding leaded), O. R. B., or released, minimum 24,000 pounds, \$1.25.

November 3, 1906, the tariff was again amended (Supp. 40) and contained the following provision:

Glass, rough rolled, vault or sidewalk and skylight, and similar rough rolled glass (not including prism glass) N. O. S., O. R. B., in packages, minimum 30,000 pounds, \$1.10.

August 10, 1907, the tariff was again amended and the last above-cited provision canceled. The tariff now reads as follows:

Rough-rolled glass, plain, figured, ribbed, sheet, prism, also pressed prism in packages; glass, white or colored, decorated, enameled, ground, stained, and wired (wired plate glass excepted) O. R. B. in packages, minimum 30,000 pounds, \$1.25.

No complaint is made of the \$1.25 rate which is now in effect and has been effective since August 10, 1907. The contention of complainant is that the tariff effective November 3, 1906, and in effect when the shipments in question moved, made the \$1.10 rate applicable to shipments of skylight glass of all kinds.

The tariff provided for rate of \$1.10 on rough-rolled skylight glass when not otherwise specified. Ribbed and wired glass at the same time was specifically provided for and the rate applicable thereto was \$1.25.

It is further contended by complainant that the term "skylight glass" is well known to the trade and includes rough rolled, ribbed, and wired glass, and that all skylight glass has been transported for many years by defendants at the \$1.10 rate on billing, showing only rough-rolled skylight glass, although the shipments included ribbed and wired glass.

In the absence of any allegation that the \$1.25 rate is unreasonable, or of any hearing upon that subject, we have before us the single  
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question of the construction of the provisions of the tariff. The complainant at the hearing and on brief argues this single question.

It seems clear to us that the term "skylight glass" is not so specific a description as "wired or ribbed glass." The latter should prevail over "skylight glass, n. o. s." In other words, if "skylight glass" includes wired and ribbed glass used for skylights, then the presence of the item "ribbed and wired glass" in the tariffs takes the latter out of the rating applicable to skylight glass n. o. s., because ribbed and wired glass for whatever purpose intended are "otherwise specified."

It is also contended by complainant that rough-rolled and wired and ribbed skylight glass had been carried in mixed carloads at the \$1.10 rate for many years and therefore its allegation that the tariff includes all skylight glass is sustained by the action of the defendants. We can not accede to this contention. As above noted, the tariff to which the defendants were parties from November 10, 1894, to August 27, 1906, described in specific terms rough-rolled, wired, and ribbed glass as taking the \$1.10 rate. Later rolled and wired glass were described in a separate item in the tariff to which was made applicable the \$1.25 rate.

The shipments in question were ribbed and wired or rough-rolled and wired or ribbed. The term skylight being descriptive and having relation to the use to which the glass was to be put by the consignee may not properly be considered controlling over the plain and specific provisions of the tariffs making rates applicable to separate kinds of glass.

In our opinion the charges on the shipments involved were properly collected by the defendants in accordance with tariff provisions, and the complaints will therefore be dismissed.

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No. 2532.  
FOREST CITY FREIGHT BUREAU  
v.  
ANN ARBOR RAILROAD COMPANY ET AL.

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*Submitted April 12, 1910. Decided April 12, 1910.*

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Following *Association of Union Made Garment Mfrs. of America v. C. & N. W. Ry. Co.*, 16 I. C. C. Rep., 405, the Commission will not order reduction in classification rating on horse blankets.

*H. H. Henry* for complainant.

*O. E. Butterfield* for New York Central Lines; New York, New Haven & Hartford Railroad Company; and Baltimore & Ohio Railroad Company.

*Charles B. Fernald* for Pennsylvania Company; Pennsylvania Railroad Company; Chicago, Indiana & Eastern Railway Company; Central Indiana Railway Company; Erie & Western Transportation Company; Grand Rapids & Indiana Railway Company; Toledo, Peoria & Western Railway Company; and Vandalia Railway Company.

REPORT OF THE COMMISSION.

*CLARK, Commissioner:*

The petition in this case, directed against carriers in Official Classification territory, is brought on behalf of the Beckman Company, a manufacturer of blankets, and prays a change in classification of horse blankets, compressed in bales, carloads and less than carloads, from first class to fifth class, and from first class to third class, respectively.

The Beckman Company has factories at Cleveland and at Philadelphia. It manufactures bed, horse, and stable blankets. This complaint, however, refers only to the classification of horse blankets shipped from the Cleveland factory. The annual output of the company is approximately 175,000 blankets, or 4,000 bales, the value of which is \$500,000.

The blankets are wrapped in paper, covered with burlap and compressed into bales by hydraulic power. There is liability to injury from moisture or from articles such as soot, oil, etc., shipped in the same car, but the testimony shows that the claims for damage have been inconsiderable.

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Leaving out of consideration a high-priced blanket which is manufactured exclusively for the New York and Boston markets, the blankets range in price from \$1 to \$7 each, or from 25 to 72½ cents per pound. The blankets are composed of cotton, virgin wool, and second-use wool, in proportions which depend upon the quality.

The average dimensions of a bale are approximately 26.8 by 20.2 by 30.4 inches. The average weight is 175.82 pounds, and the average value is \$62.17. Each bale may contain blankets of twenty different styles or prices, depending upon orders from the purchasers. A bale measuring 29 by 22 by 39 inches, weighing 236 pounds, and of the value of \$26.40, may be shipped on the same day as a bale 32 by 26 by 40 inches, weighing 256 pounds and valued at \$137.50.

It was contended that horse blankets are a comparatively cheap commodity, and when packed in compressed bales are of much greater density than the average commodities which now move in Official Classification territory under the first class rating. Complainant's principal witness testified that there is no objection to the better grades of bed blankets being rated first class for the reason that they are, generally speaking, made of virgin wool and are of high value, but that what is desired is that a compressed bale of horse blankets of varying price and quality shall be rated at an average value, irrespective of the individual value of the blankets.

The Beckman Company ships its product over the entire United States. Its business is good and has increased. It meets no competition which it "can notice" or which materially affects its business. It sells almost exclusively to the retail trade and the purchaser pays the freight. It does not appear that the present classification subjects complainant to unjust discrimination.

In the three classifications, blankets are included under "dry goods." In the multitude of articles coming under that head and class it would be as easy to demonstrate that particular articles, such as laces, silks, satins, and hosiery were of high value and peculiarly liable to damage as it would be to show that other articles were of low value and not subject to injury. If the Commission were to find that first class rating on horse blankets of an average price of approximately \$3 was unjust and unreasonable, why should not the lower-priced bed blankets be accorded a different rating from those of greater value? If classification were based on value the number of classes in the classification would be too large and the refinement too subtle for practical operation. Classification is not an exact science; nor may the rating accorded a particular article be determined alone by the yardstick, the scales, and the dollar. The volume and desirability of the traffic, the hazard of carriage, and the possibility or probability of misrepresentation of the value are considerations of prime importance in classification. At

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best it is but a grouping, and when the approximation resulting from it is not found to cause the exaction of an unreasonable or a discriminatory charge it will not be disturbed.

The only difference between the generality of bed blankets and horse blankets is the name. All are blankets. Some bed blankets are as low in price as some horse blankets. It would take an expert to determine whether the wool contained in either was virgin or second-use.

A change in the classification of an article from first to third class, less than carloads, and to fifth class, carloads, is one of importance when we consider that from Cleveland to Chicago these rates are, respectively, 41, 26, and 15 cents per 100 pounds for a distance of 339 miles. There is no showing that the present classification disadvantageously affects the business of the Beckman Company, and the question is whether under these circumstances this particular commodity, varying in value, density, and dimensions with each bale, shall be withdrawn from the general class with which it is grouped and be accorded a lower rating.

On the whole record, and following the principle in *Association of Union Made Garment Mfrs. of America v. C. & N. W. Ry. Co.*, 16 I. C. C. Rep., 405, we are of the opinion that a differentiation of horse blankets from the general class is not warranted.

The complaint will be dismissed.

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No. 2829.

HOUSTON STRUCTURAL STEEL COMPANY

v.

WABASH RAILROAD COMPANY ET AL.

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*Submitted January 25, 1910. Decided April 5, 1910.*

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Rule in Western Classification applying first class rate and minimum of 5,000 pounds to articles too large to be loaded through the side door of a 36-foot box car, or too long to be loaded through the end window thereof, found unreasonable when applied to the shipment of structural steel in this case. Reparation awarded.

*John Charles Harris* for the complainant.

*James C. Jeffery* for St. Louis, Iron Mountain & Southern Railway Company.

#### REPORT OF THE COMMISSION.

**PROUTY, Commissioner:**

This is a claim for reparation on a shipment, January 16, 1909, from Chicago, Ill., to Houston, Tex., of six pieces of structural steel, 41 feet 3½ inches long, weighing 1,301 pounds, upon which the first class rate of \$1.67 per 100 pounds, minimum 5,000 pounds, was charged. There was applied to this shipment Rule 17-B, Western Classification, which required this rate and minimum on articles too large to be loaded through side door of 36-foot car, or too long to be loaded through the end window thereof. The value of the steel shipped was \$25.37, and the freight paid thereon was \$83.50, and reparation is claimed for the difference between this sum and the amount that would have accrued on the basis of the commodity rate of 81 cents, actual weight, namely, \$10.53.

The car used in this service was a furniture car 45 feet in length, and the pieces of steel were loaded through the end door or window of the car and hauled to destination without transfer. Complainant does not attack the unreasonableness of the rule where the shipment necessitates the use of a flat car, which is unsuitable for the transportation of general merchandise. Flat-car service was not performed in this case, the shipment having been held until a furniture car was available, when it was moved in said car along with other articles of general merchandise from Chicago to Houston.

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The Commission has just decided in *Jones v. Southern Ry. Co.*, 18 I. C. C. Rep., 150, that where an article is too long or too bulky to be loaded through the side door of an ordinary box car not less than 40 feet 6 inches in length, and is for that reason carried upon an open car, a minimum charge not exceeding the first class rate upon 4,000 pounds may be assessed under proper tariff requirement, but that when the shipper awaits the convenience of the carrier, so that the shipment is actually transported in a box car, as this one was, no additional charge should be made.

We are of the opinion that the rule under which these charges were assessed, as applied to this shipment, was unjust and unreasonable, in providing for the assessment of charges other than at the regular rate upon the actual weight; that the charges assessed and collected were unjust and unreasonable to that extent, and that the complainant is entitled to recover the sum of \$72.97, with interest.

We are further of the opinion that the rule under which these charges were assessed is unreasonable and that the defendants should be required to cease and desist from the maintenance of that rule in the future, but that they may, if they elect, provide that when articles are actually carried upon open cars, for the reason that they are too long or too bulky to be loaded through the side door of an ordinary box car not less than 40 feet 6 inches in length, a minimum charge not exceeding the first class rate upon 4,000 pounds may properly be imposed.

An order will be issued accordingly.

No. 2864.

E. P. DOBBS

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY.

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*Submitted February 28, 1910. Decided April 11, 1910.*

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Complainant shipped three carloads of canned peaches from Oakhurst, Ga., to Marietta, Ga., and from thence rebilled one car to Lexington, Ky., and two cars to Cincinnati, Ohio; *Held*, That the movement from Oakhurst to Marietta was an intrastate movement. Reparation denied.

*Hines & Jordan* for complainant.

*W. A. Northcutt* for defendant.

#### REPORT OF THE COMMISSION.

**COCKRELL**, *Commissioner*:

Complainant in this case seeks reparation in the sum of \$69.24 on account of alleged excessive freight charges on shipments of canned peaches. November 3, 1908, complainant shipped three cars of canned peaches from Oakhurst, Ga., to himself at Marietta, Ga. On the same day two of these cars were reshipped from Marietta to Cincinnati by the Marietta Ice Company, which company is owned by complainant, and one car was reshipped by the ice company to Lexington, Ky. Had complainant shipped the cars through to final destinations from Oakhurst, the interstate class rates would have applied, which were 58 cents per 100 pounds to Lexington, and 60 cents to Cincinnati. By shipping to Marietta and reshipping from thence to destinations, the rate applicable was a combination rate of 6 cents, Oakhurst to Marietta, and 27 cents for each movement beyond.

Complainant contends that the rate from Oakhurst to Lexington and Cincinnati should not be higher than from Marietta, and that therefore the rate of 33 cents is unreasonable, and he asks reparation on the basis of the 27-cent commodity rate from Marietta, which rate has been made applicable to Oakhurst since the filing of this complaint. The commodity rate of 27 cents from Marietta was put in by the carrier,

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according to its testimony, for the purpose of building up traffic in canned peaches between that point and the northern markets and is regarded by it as low for the service performed. Complainant had requested the carrier to make this rate applicable from his shipping point, Oakhurst, which is approximately 4 miles from Marietta. Before this request was complied with he made the three shipments involved in this case and used the lowest combination applicable at the time the shipments moved.

Defendant strongly maintains the reasonableness of the 33-cent rate collected, but claims that the movement from Oakhurst to Marietta was intrastate in character. If this position is correct there is left for the consideration of the Commission only the movements from Marietta to destinations, and it is admitted of record that the rate for this service was reasonable.

Complainant did not attempt to make a through interstate shipment when tendering this freight to the carrier, and he expressly absolves the agents of the carrier from conniving for the purpose of defeating the through rate on canned goods. He states in this connection: "The rates were given me, and the one from Oakhurst was so unreasonable that I took the best combination that I could make from them." By taking the course he did complainant voluntarily adopted a movement and a rate applicable thereon which were intrastate in character. *Gulf, Colorado & Santa Fe v. Texas*, 204 U. S., 403. Moreover, separate contracts were made for the two movements; charges for the first movement were paid at Marietta and did not follow the shipments to destinations.

Under the facts of record we find that the Commission is without jurisdiction of the movement from Oakhurst to Marietta to which was applied and collected the separately established state rate, and as there is no allegation of unreasonableness as to the separately established interstate commodity rate from Marietta to destinations, the complaint will be dismissed, and it will be so ordered.

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No. 2285.

AMERICAN CREOSOTE WORKS, LIMITED,  
v.  
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

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*Submitted February 5, 1910. Decided April 4, 1910.*

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1. When advised that complainant had entered into a contract under which ties were moving on a rate in effect defendants canceled said rate; *Held*, That complainant was directly damaged thereby in the matter of car supply. Following the doctrine in *Washer Grain Co. v. M. P. Ry. Co.*, 15 I. C. C. Rep., 147, and *Joynes v. P. R. R. Co.*, 17 I. C. C. Rep., 361, no reparation will be awarded.
2. Rate charged for the movement of ties from New Orleans to East St. Louis found to be unreasonable and unjustly discriminatory. Reparation awarded.
3. The difference in the charge for switching at Carbondale, Ill., and New Orleans, La., found not to be unjustly discriminatory.
4. Practice of defendants of charging complainant a rate per 100 pounds while at the same time according to others a rate under which the weight of a tie was estimated at 100 pounds per tie, found to be unreasonable and unjustly discriminatory. Reparation awarded.

*Frederic D. McKenney, John S. Flannery, G. Bowdoin Craighill, and Charles Payne Fenner* for complainant.

*Sidney F. Andrews and Ed. Baxter* for defendants.

REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

The American Creosote Works, Limited, seeks by this proceeding to recover reparation for damages of a general and special nature due to the alleged unlawful acts of the defendants in giving to the Ayer & Lord Tie Company preferential rates and advantages between January 1, 1906, and the date of the taking of the testimony in this case, November 1, 1909. It also prays for the establishing of rates and privileges for the transportation of standard railroad cross-ties, before and after they have been treated with preservatives, equal to the rates and advantages alleged to have been enjoyed by the Ayer & Lord Tie Company.

The complainant was incorporated in 1901, and has been engaged since that time in the business of dealing in and treating with pre-

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servatives, lumber, piles, cross-ties, and other timber at its plant at Southport, La., on the Illinois Central Railroad, between 3 and 5 miles from Stuyvesant docks and the Illinois Central fruit wharves just outside of the city, but within the switching limits of New Orleans. Practically all of the material used by complainant comes from the forests of Louisiana and Mississippi, and is shipped over the lines of the two defendants to complainant's plant at Southport for treatment and thereafter reshipped to ultimate destination.

The Ayer & Lord Tie Company is engaged in treating ties grown in practically the same territory at its plant established at Carbondale, Ill., in 1903, 615 miles from New Orleans and 90 miles from St. Louis, on the Illinois Central Railroad. This company also operates a plant at Grenada, Miss., on the Illinois Central Railroad, 300 miles from New Orleans and 100 miles south of Memphis, Tenn.

The complainant employs what is called the "full-cell" creosote process, which leaves the cells of the wood full of oil, requiring from  $8\frac{1}{2}$  to 10 pounds of oil per cubic foot for each tie. This treatment adds 20 to 40 pounds to the weight of the tie. The Ayer & Lord Tie Company usually treats with the zinc-chloride process at its Carbondale plant, while at Grenada both zinc and creosote are used. The creosote process used at Grenada, however, differs from that employed by complainant, being known as the "ruping" process, by which the wood cells are filled with oil and then the oil is extracted or withdrawn, leaving the inside of the cells painted with oil instead of full of oil, thereby increasing the weight of the tie 4 or 5 pounds per cubic foot. The zinc process and the ruping process are cheaper than the full-cell process, and while not as effective as preservatives, they are sufficient to make a tie last in certain climates until it is worn out. The equipment required for treating such material is the same for all the three processes described.

The discrimination in rates and facilities alleged consisted in giving to the Ayer & Lord Tie Company a per-tie rate on all shipments of standard railroad cross-ties, whether treated or untreated, and charging complainant a much higher rate based upon the actual weight; further, in granting to Ayer & Lord the privilege of treating ties in transit at its plants at Carbondale and Grenada and denying a like privilege to the complainant; in making a charge of \$1.50 a car for switching at Carbondale, and charging complainant \$6 a car for switching at Southport; and in canceling rates which had been in force after defendants were informed that complainant had made contracts based thereon for delivery of ties.

The amount of reparation named in the complaint is \$581,346.51. Of this sum \$500,000 is in the nature of general damages resulting from alleged preferential rates and privileges granted to the Ayer & Lord Tie Company, whereby complainant suffered damage by loss

of business. The balance of the amount, namely, \$81,346.51, is made up of specific allegations set forth in detail in exhibits filed in the case.

We now proceed to take up the items based upon specific acts of alleged discrimination, each of which constitutes a separate and distinct transaction to be decided upon its own merits.

There is a claim for reparation in the sum of \$56,000 for loss in connection with a certain contract entered into May 23, 1907, for 500,000 ties to be delivered to the Chicago, Rock Island & Pacific Railway Company, f. o. b. cars at Southport. At the time this contract was made a rate of 11 cents per tie from New Orleans to Memphis was in effect; but a few days subsequent thereto, on May 31, 1907, the Illinois Central Railroad Company informed complainant that the 11-cent rate would be canceled on July 15, 1907. This cancellation greatly increased the rate from New Orleans to Memphis. Complainant's president testified that the cancellation of the 11-cent rate compelled it to agree to a supplemental contract reducing the price 8 cents per tie, which represented the difference in freight rate that the Rock Island had to pay; that this reduction in price applied on 100,000 ties, and thereby caused a loss of \$8,000; that the change in rate also compelled the cancellation of part of the contract or for 150,000 ties, thereby losing a profit of \$30,000; that as a further result of cancellation of said 11-cent rate and the inadequate car supply furnished by the only other railroad over which the ties could be shipped, complainant was compelled to close down its plant for ninety days, at a cost of \$200 per day, making the loss on this account \$18,000. These three items make the total of \$56,000 damages claimed under this item.

The record shows that as soon as the Illinois Central Railroad Company learned of this contract it at once took steps to cancel the per tie rate of 11 cents, and the fact that the resulting raise in the rate occurred just at this time is significant. We do not fail to observe that in another place in this record it is admitted by defendants that when a rate, which operated adversely to this complainant and to the advantage of the Ayer & Lord Tie Company, was changed after the filing of this complaint, time was allowed the Ayer & Lord Company to complete pending contracts. This contract called for delivery f. o. b. cars at Southport, and the change in the rate therefore directly affected the Rock Island Company, the second party to the contract. However, the record shows that after the cancellation of the 11-cent rate, movement over the Illinois Central was thereby prohibited, and great difficulty was experienced by both parties to this contract in obtaining cars. The car accountant of defendants tes-

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tified that there was a large movement of empties north from New Orleans, but this increase in the rate cut off complainant from this supply.

Admitting that many things affected this contract for which the defendants are in no way responsible, the record shows that the cancellation of this 11-cent rate seriously affected the car supply of complainant. We can not sanction any theory of rate making on which a rate is published with the intention of having it used only by one shipper, or only for articles to be employed in a special undertaking, and canceling it as soon as it is discovered that it is to be shipped under by others. It is stated that this rate was only intended for the use of the ties of the Memphis Street Railway Company, but the publication of a tariff for any one shipper which does not apply to all is clearly a violation of law. As long as the rate was in force the ties involved in this contract moved under it, but comparatively few ties could be moved before the rate was taken out. This 11-cent-per-tie rate applied on "cross-ties, street railroad," but the evidence shows that the character of the ties was identical with those shipped by complainant, and we have already held that the carrier has no right to attempt to dictate the uses to which commodities transported by it shall be put, in order to enjoy a transportation rate.

There is a dispute as to the direct cause for the cancellation of complainant's contract. It is maintained by defendant that the reason for its cancellation was because only one-half of the ties called for under its terms could be pine ties and after delivering the pine ties complainant was unable to furnish oak ties. This fact is denied by complainant, but even admitting it, the fact remains that the complainant was seriously handicapped in making delivery of the first 250,000 pine ties. Upon the cancellation of the per-tie rate the only rate applicable was the lumber rate which at once cut off this movement from New Orleans to Memphis. At the same time there was in effect a rate to Memphis of 10 cents per tie to be treated in transit at the Grenada plant which rate applied as far south as Montgomery, Miss., within 133 miles of New Orleans. Under this rate the haul of the treated tie would be, from Grenada to Memphis, a shorter distance than from New Orleans to Memphis, but even allowing for this difference in weight we fail to find any justification for such a discrimination in favor of the Granada plant as is embraced in a rate of 10 cents per tie from Montgomery compared with 13 cents per 100 pounds from New Orleans, which latter haul would give the maximum employment to equipment.

Under all the circumstances and conditions we find that the complainant was subjected to unjust discrimination by reason of the acts of the defendants and suffered damages, but following the

doctrine in *Washer Grain Co. v. M. P. Ry. Co.*, 15 I. C. C. Rep., 147, and *Joyes v. P. R. R. Co.*, 17 I. C. C. Rep., 361, the Commission does not feel justified in awarding damages under the \$500,000 claim or under the \$56,000 claim, but leaves the complainant to pursue its remedy, if any, in the courts.

There is a claim for reparation in the sum of \$8,334.40 partly by reason of an unjust and discriminatory charge on 95 cars containing 25,112 ties on which was paid the yellow-pine lumber rate of 20 cents per 100 pounds, amounting to 36 cents per tie, while at the time there was in force via the lines of defendants a rate of 14 cents per tie from New Orleans to East St. Louis, Ill., via Carbondale. These ties were moving under a contract entered into by complainant on February 14, 1907, to furnish the East St. Louis & Suburban Railway Company with 40,000 ties at \$1 per tie, f. o. b. cars, East St. Louis.

Illinois Central tariff No. 1595-A provided a rate of 14 cents per tie from New Orleans to East St. Louis, Ill., with privilege of treatment in transit at Carbondale, Ill. This tariff was applicable only on ties to and from Carbondale, was put in force only for the use of the Ayer & Lord Tie Company, and was established at its request. The 14-cent rate applied on standard dry-pine cross-ties before treatment to Carbondale and after treatment from Carbondale. This tariff was in effect for several years prior to its discovery by complainant. As soon as the informal complaint was filed in this case, defendants withdrew its application to New Orleans and other points as rapidly as possible without interfering with existing Ayer & Lord contracts.

As an illustration of discrimination by the operation of tariff 1595-A, complainant introduced the following table, which shows the distances and rates via Carbondale plant under tariff 1595-A, and distances and rates under the yellow-pine lumber tariff via Southport plant; in both cases treatment at the plant is contemplated:

From—	To—	Via Southport.		Via Carbondale.	
		Distance.	Rate.	Distance.	Rate.
		Miles.	Cents.	Miles.	Cents.
Gloster, Miss.....	Aurora, Ill.....	1,066	48	830	21
Hazelhurst, Miss.....	Champaign, Ill.....	945	46	635	17
Ponchatoula, La.....	Chicago, Ill.....	670	43	874	18
Hammond, La.....	East St. Louis, Ill.....	750	33	652	14
New Orleans, La.....	Chicago, Ill.....	922	39	922	18
Hammond, La.....	Dubuque, Iowa.....	1,158	48	1,053	28

The average haul between the points in the above table via Southport is 90.83 miles greater than the average haul via Carbondale, counting in the back haul, if any, in either case. This makes the average

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haul via Southport 11 per cent greater than the average haul via Carbondale. The average rate per tie in the one case is 43 cents per tie and in the other 18.5 cents per tie, showing that for 11 per cent excess mileage the rate via Southport would require 132 per cent more freight charge.

As bearing upon the reasonableness of a rate on cross-ties moving north over defendants' lines, witness for defendants testified that the cost of the haul to the carrier was 60 per cent less than a similar haul of lumber, and that 68 per cent of the ties moved northward in coal cars.

Complainant's witness testified concerning the charges paid on the ties in this contract that they averaged 180 pounds and that at 20 cents per 100 pounds, the lumber rate, the charges per tie amounted to 36 cents as against 14 cents per tie under tariff 1595-A. The latter tariff contemplated the haul of an untreated tie for a considerable portion of the distance at a per-tie rate, whereas the rate paid on complainant's ties was for a haul of the whole distance on a treated tie at actual weight. The record shows that a tie treated with the full-cell process is increased in weight approximately 30 pounds.

Taking into consideration all the circumstances involved, and making allowance for the difference in weight, we find that the rate of 20 cents per 100 pounds, amounting to approximately 36 cents per tie, charged on the shipments specified was unjust, unreasonable, and unjustly discriminatory in so far as it exceeded a rate of 16.8 cents per tie, and reparation will be awarded under this item of the difference between the amount actually paid and what would have been assessed at 16.8 cents per tie, with interest from July 1, 1907. These shipments all moved between March 7 and May 24, 1907, and the date of filing the informal complaint was January 14, 1908. Since filing the complaint defendants have put in force a uniform practice of charging at the actual weight of ties for a part of the producing territory involved in this complaint.

The balance of the claim under this item of \$8,334.40, namely, \$3,870.88, is due to the fact that the exorbitant freight charge led complainant to obtain release from the contract. The amount is made up of an alleged loss of profit of 26 cents per tie on 14,888 ties. We do not find this claim well founded, and no reparation will be awarded thereon.

Reparation is asked in the sum of \$5,274 by reason of an alleged discriminatory switching charge of \$6 per car on complainant's ties, moving from Southport to Stuyvesant docks and the Illinois Central fruit wharves, whereas the switching charge at the Carbondale plant is \$1.50 per car. The amount is predicated upon 1,172 cars at \$4.50

per car, the difference between a charge of \$6 and a charge of \$1.50 per car. In this connection the complainant claims that it was discriminated against in that a car moving from the tie-producing district and stopped at complainant's plant for treatment and then sent on to the docks for export required the identical service as a car shipped from the producing territory by way of the Carbondale plant and there stopped off for treatment.

We do not find this claim well founded. The circumstances and conditions surrounding this charge at New Orleans bear no relation whatever to the charge collected at Carbondale. New Orleans is a terminal and Southport is within the switching limits thereof, and at the terminus of a revenue haul, and the rule fixing the charge at New Orleans applied uniformly to all industries similarly situated at New Orleans. The service rendered between complainant's plant and the wharves is not sufficient to justify a treatment-in-transit privilege, and without going into the reasonableness of the \$6 charge for the service performed, we find that complainant is rightly placed on the same footing as other industries similarly situated at New Orleans.

The sum of \$11,738.11 damages is predicated upon the movement of 242,023 ties from the producing district to Southport, the average distance of which was 142 miles. It is alleged that the rate charged was equivalent to 8.4 cents per tie, or 6 cents per 100 miles. At the same time the Ayer & Lord Tie Company had a rate from producing points to Carbondale, an average distance of 465 miles, of 12 cents per tie or  $2\frac{1}{2}$  cents per tie per 100 miles, which rate is equivalent to 3.55 cents per tie for 142 miles, and complainant was therefore charged 4.85 cents per tie more than the Ayer & Lord Tie Company would have been charged for having its ties hauled the same distance. By multiplying the number of ties, 242,023, by the alleged excess charge of 4.85 cents the sum of \$11,738.11 is obtained.

The record shows that conditions surrounding a movement of ties north from the Mississippi tie-producing district are substantially dissimilar from the southward movement. Therefore, the above comparison of rates on the two movements is not well founded. The haul to Carbondale is also a much longer haul, and can therefore very properly take a lower rate per 100 miles than the haul to Southport.

Aside from the amount of the rate, however, it will be noted that the rate to Carbondale is calculated upon an estimated weight of 100 pounds per tie, while the rate to Southport is based upon the actual weight. The record shows that ties shipped to both places from the same point were alike in every respect, and we can see no justification for the application of one rule to one shipper and another rule to another. The defense offered for the practice of making the northward rates on such an

entirely different basis from those southward is competition, but we can not sanction a practice which results in such gross discrimination between two shippers from the same point of the same commodity. We note that the practice was changed after this complaint was filed, and that the actual weight is now used on Carbondale shipments in place of the estimated weight on shipments from a part of the producing territory. Under all the circumstances we find that the charges assessed on the shipments of complainant were unjust, unreasonable, and unjustly discriminatory in that they were not based upon an estimated weight of 100 pounds per tie but were assessed at actual weight, and reparation will be awarded in a sum equal to the amount collected on the actual weight in excess of 100 pounds per tie, with interest from January 1, 1908, a very large proportion of the shipments having moved in 1906 and 1907 and only a few later than January, 1908. This award leaves the amount of the rate as collected untouched, but applies to complainant's shipments the same rule of calculation as was enjoyed by other shippers, namely, the Ayer & Lord Tie Company. These shipments all moved between January 27, 1906, and March 3, 1909, and the informal complaint was filed January 14, 1908.

The record contains considerable testimony to show that it was the studied purpose of the defendants to discriminate against complainant, and to accord the Ayer & Lord Tie Company undue preference and advantage over the complainant. We have confined our disposition of the case to such matters as are sufficiently specified and proven in the record, but take this occasion to say that practices of such a highly discriminatory character as the record discloses in several instances are wholly without extenuation and can not be too severely condemned.

The record fails to disclose specifically the present conditions with respect to rates and practices, but it appears that the acts of discrimination complained of have been largely discontinued since the filing of this complaint. It may be added, however, that the defendants should at once remove all discriminatory practices and rates and make their tariffs accord to all shippers of ties from the points covered by this case privileges and rates which will be just and fair for the service performed and nondiscriminatory. No order for the future will be issued at this time.

According to the record, the reparation herein awarded aggregates \$3,770.38 on the shipments to East St. Louis and \$5,398.24 on the shipments to Southport, but as the defendants at the hearing requested an opportunity to check such shipments, the order of reparation will be deferred, pending such action, for not more than sixty days.



No. 2948.

J. H. WILSON SADDLERY COMPANY

v.

COLORADO & SOUTHERN RAILWAY COMPANY ET AL.

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*Submitted March 10, 1910. Decided April 11, 1910.*

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Claim for reparation on less-than-carload shipments of harness leather in boxes, rolls, and bundles denied. Rate charges not found to be unreasonable.

*G. M. Stephen* for complainant.

*N. H. Loomis, C. G. Dorsey, and F. C. Dillard* for Southern Pacific Company and Union Pacific Railroad Company.

*F. C. Dillard* for Northwestern Pacific Railroad Company.

REPORT OF THE COMMISSION.

*LANE, Commissioner:*

Complainant between February 1, 1909, and June 2, 1909, made a number of less-than-carload shipments of harness leather in boxes, rolls, and bundles from San Francisco, Cal., and other points in California to Denver, Colo. On these shipments the defendants collected \$1.25 per 100 pounds. It is alleged in the complaint that the charge collected was unreasonable to the extent that it exceeded \$1.15. Reparation in the sum of \$33.53 on 22 shipments is asked.

Complainant relies upon these facts to sustain its claim:

That for a number of years prior to January 1, 1909, defendants were parties to tariffs which named rate of \$1.05 on the commodity in question from California points to Denver; that on January 1, 1909, the rate was increased to \$1.25; and that on June 6, 1909, it was reduced to \$1.15.

Defendants assert that the \$1.25 rate is just and reasonable, but that after notice was given of its establishment a number of leather producers in California protested against the increase from \$1.05. The ground of the protest was that they were unable to compete with producers in Kentucky, Michigan, Ohio, and other states on the rate of \$1.25. Despite this protest the rate was put into effect and was

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maintained for a period of five months, when it was reduced to \$1.15, where it has since remained. No protests have been received, it is asserted by the defendants, from the producers since the establishment of the existing rate.

Defendants contend that the \$1.15 rate is unusually low, as shown in comparison with rates from other points.

It is further asserted that the \$1.15 rate is blanketed from Colorado common points to the Atlantic seaboard, and is maintained under that adjustment for the benefit of California producers to enable them to reach all eastern markets.

Under these circumstances we are unable to find that the charges complained of in this case were unreasonable. The rate charged is as low or lower than rates generally on the same traffic for less distance and over routes which do not have the transportation difficulties to surmount which are known to exist with respect to carriers which reach Denver from the Pacific coast. It is insisted by defendants that the rate now in effect is very low and would be increased and maintained at \$1.25 except for representations by California producers that they can not compete with producers in the middle west on a higher rate. As a concession to these producers the lower rate was put into effect. There is no evidence in the record that the \$1.25 rate is unreasonable from a transportation standpoint, and therefore we can find no basis upon which to award the reparation asked.

The complaint will therefore be dismissed.

18 I. C. C. Rep.

No. 3103.

INTERNATIONAL HARVESTER COMPANY OF AMERICA  
v.  
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

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*Submitted February 9, 1910. Decided April 11, 1910.*

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Complaint alleging the collection of unreasonable charges on shipments of agricultural implements from Chicago, Ill., to Black Earth and Mauston, Wis., dismissed because of incompleteness of record.

*Samuel D. Snow* for complainant.

*William Ellis* for defendant.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

Complainant challenges the reasonableness of the rates assessed and collected by the defendant upon two carload shipments of agricultural implements from Chicago, Ill., to Black Earth and Mauston, Wis., respectively. It is alleged that the first of these shipments moved on March 2, 1909, and that charges were collected in accordance with the established commodity rate of 18 cents per 100 pounds, or in the total amount of \$49.14. A class rate of 16 cents per 100 pounds on agricultural implements was contemporaneously in effect, and on April 1, 1909, the commodity rate was reduced to the same figure. The second of these shipments is alleged to have been made on May 12, 1909, charges being collected in accordance with the established class rate of 21 cents per 100 pounds, or in the total amount of \$58.17. For some time prior to the movement of this shipment a rate of 18 cents per 100 pounds had customarily been applied on this traffic upon the authority of an intermediate clause, but the cancellation of this clause left the higher class rate in effect. On August 15, 1909, the 18-cent rate was made specifically applicable.

The complainant seeks reparation in the amount of the difference between the charges collected and the charges which would have accrued under the subsequently established rates. The defendant

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admits the justice of the complaint and joins in the request that reparation be awarded. By stipulation between the parties the case is submitted for determination upon the pleadings.

The complaint is not supported by expense bills or other evidence, and there is therefore nothing before us which can enable us to find as a fact that the shipments giving rise to complaint actually moved or that charges were collected as claimed. The naked allegations of the complainant are not sufficient to warrant a finding of any character, even though supplemented by the admissions of the defendant. The Commission is therefore not justified in making an award of reparation upon this record.

The complaint will be dismissed.

18 I. C. C. Rep.

No. 3047.

WILLIAM K. NOBLE

v.

VICKSBURG, SHREVEPORT & PACIFIC RAILWAY  
COMPANY ET AL.

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*Submitted March 21, 1910. Decided April 11, 1910.*

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Rate on coiled elm hoops, carloads, from Tallulah, La., to Lime City, Tex., found to be unreasonable. Reparation awarded.

*R. B. Coapstick* for complainant.

*S. H. West* and *Roy F. Britton* for St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas.

#### REPORT OF THE COMMISSION.

**CLARK, Commissioner:**

On June 9, 1909, complainant shipped via lines of the defendants from Tallulah, La., to Lime City, Tex., one carload of coiled elm hoops weighing 49,900 pounds, on which he paid \$150, at rate of 30 cents per 100 pounds.

Based on lower rates for like hauls in effect before, at the time of, and after the shipment, it is alleged that the rate charged was and is unjust and unreasonable. The Commission is asked to fix a reasonable rate for the future and to grant reparation in the sum of \$50.20.

Lime City is a small station local to the St. Louis Southwestern Railway of Texas, intermediate Tallulah to Gatesville, Tex., and about 19 miles from Gatesville. Tallulah is located on the Vicksburg, Shreveport & Pacific and the St. Louis, Iron Mountain & Southern railways, 151 miles from Shreveport.

Complainant's principal competition in Texas is with Arkansas points, from which the rates range from 20 to 25 cents, but he also buys hoops in Arkansas for delivery to Texas points.

A general commodity rate of 30 cents per 100 pounds, minimum 30,000 pounds, applicable from New Orleans and other points, including Tallulah, to Texas points, including Lime City, was carried in a Southwestern Lines' tariff, but that tariff provided that it would not apply from points specified in certain tariff publications of the indi-

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vidual lines. A tariff of defendant Vicksburg, Shreveport & Pacific Railway, so specified, contained rates from Tallulah, but did not name rates to Lime City. Effective June 30, 1909, the 30-cent rate was reduced to 29 cents and that rate is now in effect, but this joint tariff, F. A. Leland's I. C. C., No. 659, again contains the provision that rates shown therein will not apply from points named in certain of the individual lines' publications, including the Vicksburg, Shreveport & Pacific tariff above referred to. This provision is indefinite and involved and leaves the application of the tariff uncertain. The person who consults this tariff for a rate is not and can not be armed at the same time with a file of the tariffs of the individual lines parties thereto, and it must be reconstructed so as to show clearly and definitely its application.

A rate of 20 cents per 100 pounds on hoops from Tallulah to Gatesville, but not to Lime City, applicable via defendants' lines was canceled effective July 10, 1908, with statement that combination rates would thereafter apply.

We do not understand Leland's tariff I. C. C., No. 659 as quoting joint rate on hoops from Tallulah to Lime City via the lines of defendants. If we are correct in this understanding, there is at present no such joint rate in effect. The combination is 8 cents Tallulah to Shreveport plus 18½ cents from Shreveport to either Gatesville or Lime City, and no justification appears for any higher rate for a through shipment than that combination.

The lumber rates from Louisiana to Texas points are highly competitive, and in many cases are blanketed over large areas or long distances. It is testified that all the Texas lines have not established these rates at all points for the reason that the business is considered undesirable and unremunerative. Defendants St. Louis Southwestern Railway and St. Louis Southwestern Railway of Texas justify the lower rates from Arkansas as being practically, so far as their lines are concerned, for a one-line haul, and established to meet controlling competitive conditions.

There is here no prayer that the Commission establish a through route and joint rate. Shipments can and do move through. A reduction of the rate below the present combination would involve a finding that the separately established rates were and are unjust and unreasonable. From the record we are not prepared to so hold. We are of the opinion that on the date this shipment moved a charge in excess of 26½ cents per 100 pounds on hoops, carloads, from Tallulah, La., to Lime City, Tex., was unjust and unreasonable; that the rate for the future should not exceed that amount, with a carload minimum of not more than 30,000 pounds; and that complainant is entitled to reparation in the sum of \$16.52, with interest.

Such an order will be entered.

No. 3085.  
G. W. RYAN  
v.  
GREAT NORTHERN RAILWAY COMPANY ET AL.

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*Submitted March 2, 1910. Decided April 11, 1910.*

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Through class rate in excess of combination of locals found to be unreasonable and unjust. Reparation awarded. Rate for the future fixed.

*G. W. Ryan* for complainant in person.

*J. D. Armstrong* for Great Northern Railway Company.

*George H. Higbee* for Pacific Coast Steamship Company.

REPORT OF THE COMMISSION.

**COCKRELL, Commissioner:**

This complaint alleges that on June 15, 1909, there was shipped from San Francisco, Cal., consigned to complainant at Chinook, Mont., one carload of dried fruit, in boxes, the actual weight of which was 26,320 pounds; that upon this shipment charges amounting to \$477 were collected, based on through fourth class rate of \$1.59 per 100 pounds, minimum 30,000 pounds; that there was in force at the time said shipment moved a combination rate of \$1.15 per 100 pounds applicable via route of movement, made up of commodity rate of \$1 per 100 pounds, minimum 24,000 pounds, from San Francisco to Havre, Mont., plus rate of 15 cents, minimum 30,000 pounds, from Havre to Chinook, which was filed with the Commission; that on basis of this combination rate the charges on said shipment would have aggregated \$308.20 and the charges of \$477 actually collected were unreasonable and excessive to the extent that they exceeded \$308.20. The said rate of \$1.59 is, therefore, alleged to have been and to be unreasonable and unjust and reparation in the sum of \$168.80 is asked.

The defendant, the Pacific Coast Steamship Company, in its separate answer, states that the revenue accruing to its line for the portion of the transportation furnished by it has been and will be the same whether the through rate charged by the Great Northern Rail-

18 I. C. C. Rep.

way Company be one or the other or any of the rates stated in the petition. It therefore asks that, as to it, the complaint be dismissed.

The defendant, the Great Northern Railway Company, in its separate answer, admits all the allegations in the petition and submits said petition for such action as the Commission may deem just and proper.

Upon these admissions by the pleadings, the Commission finds that the rate of \$1.59, minimum 30,000 pounds, resulting in the exaction of charges amounting to \$477, was unreasonable and unjust to the extent that it exceeded the combination rate of \$1.15, which combination rate would have resulted in charges aggregating \$308.20, and that the complainant is entitled to reparation from the Great Northern Railway Company in the sum of \$168.80, with interest.

With respect to a rate for the future, an examination of the tariffs on file with the Commission shows that effective September 2, 1909, the defendants published a joint through commodity rate of \$1.10 per 100 pounds, minimum 30,000 pounds, from San Francisco, Cal., to Mondak, Mont., which is a local point on the same line, 265 miles farther distant than Chinook from San Francisco.

Under all the circumstances and conditions of this case the Commission is of the opinion and so holds, that a carload rate not to exceed \$1.10 per 100 pounds, minimum not more than 30,000 pounds, on dried fruit in boxes from San Francisco, Cal., to Chinook, Mont., should be established by defendants and be maintained for the future.

An order in accordance with these findings will be issued.

18 I. C. C. Rep.



No. 1974.

MARSHALL &amp; MICHEL GRAIN COMPANY

v.

ST. LOUIS &amp; SAN FRANCISCO RAILROAD COMPANY ET AL.

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Submitted April 6, 1910. Decided April 11, 1910.

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Previous report and order were based upon admissions by defendants which, upon further investigation, were found to have been inaccurate and incorrect. Previous order rescinded and new order in accord with the facts entered.

*John A. Wilson* for complainant.

*E. B. Peirce* for St. Louis & San Francisco Railroad Company.

*Blewett Lee* for Yazoo & Mississippi Valley Railroad Company.

## SUPPLEMENTAL REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

At original hearing in this case counsel representing defendants St. Louis & San Francisco Railroad Company and Yazoo & Mississippi Valley Railroad Company admitted that 12 cars as to which misrouting was alleged had been misrouted by defendant Yazoo & Mississippi Valley Railroad Company, and stated that that defendant was willing to pay any reparation awarded by the Commission because of such misrouting. Upon that admission the Commission based its report, 16 I. C. C. Rep., 385, and its order that defendant Yazoo & Mississippi Valley Railroad should pay to complainant \$319.20, with interest at 6 per cent per annum from January 24, 1907.

Subsequent inquiry made by the Commission developed the fact that the statement and admission that had been made by counsel were incorrect, and investigation developed that in fact the Yazoo & Mississippi Valley Railroad had never hauled or had possession of any one of the 12 cars.

In December, 1909, the case was called for further hearing and for such explanation as defendants desired to make. It was there stated by traffic officers and counsel for defendants St. Louis & San Francisco Railroad and Yazoo & Mississippi Valley Railroad that there had not been any intent or purpose to misstate the facts or mislead

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the Commission, or any thought of representing other than the true situation. The original complaint involved 18 carloads, 6 of which, as stated in the original report and as now understood by the Commission, moved subsequently to March 18, 1907, and were, in fact, misrouted by defendant Yazoo & Mississippi Valley Railroad, which defendant paid reparation thereon under Rule 70 of the Commission's Tariff Circular No. 15-A.

It appears that the six shipments just referred to were covered by one claim filed by complainant with the St. Louis & San Francisco Railroad, and that the other 12 cars were covered by another claim filed by complainant with same defendant. It seems that, without proper investigation and without due care, representatives of defendants assumed that the 12 cars had been handled in the same manner as the 6 cars as to which they had made investigation, and that the statement of counsel, which was accepted as the basis of the Commission's previous report and order, was made upon the strength of that assumption.

The actual movements of the cars in question have been traced and checked by a representative of the Commission, by defendant St. Louis & San Francisco Railroad Company, by defendant Yazoo & Mississippi Valley Railroad, and, as far as possible, by the representative of complainant, and copies of these several checks have been filed with us, together with stipulation that the Commission may, on the record as it now stands and without further hearing, reopen the case for further consideration, amend the pleadings as may be necessary in accord with the facts now shown, rescind its previous order, and enter such order as may in its judgment be warranted.

The differences which appear in the several checks of these shipments hinge upon whether or not the initial carrier was responsible for misrouting certain shipments as to which the shipper directed specific routing, and whether or not certain cars were entitled to reconsignment at Memphis under the through rates. It is contended by complainant that in the instances in which routing was inserted in bills of lading by the shipper it was done under advices of or received from agents of the initial carrier, St. Louis & San Francisco Railroad, and that, therefore, the responsibility for the routing was upon that carrier. That defendant answers this by saying that these cars were tendered to it under routing instructions of the shipper, which were obeyed, and that liability for misrouting does not rest with it, even though the routing so inserted by shipper had, at some previous time, been quoted to shipper by agent of defendant.

It is suggested that the cars which were reconsigned at Memphis moved through without unloading or taking advantage of any transit privilege, and that, therefore, they were entitled to the through rates.

This is answered by the statement that these cars were consigned to Memphis and were reshipped from Memphis, and that, as there was no provision in tariff for a reconsignment privilege at Memphis, the only lawful rates applicable to these shipments were the full combinations on Memphis.

All of the shipments here considered were destined to Gulfport, Miss.

We find that defendant St. Louis & San Francisco Railroad received the following shipments without routing instructions and misrouted them, and that the charges thereon exceeded what the charges would have been if cars had been properly routed by the sum of \$128.87:

Car K. C. C. & S. 5110 from Miami, Ind. T., February 11, 1907.

Car P. M. 50978 from McCune, Kans., December 27, 1906.

Car C. & E. I. 61605 from McCune, Kans., December 26, 1906.

Car C. & E. I. 61423 from Girard, Kans., etc., February 5, 1907.

We find that the following shipments were delivered to defendant St. Louis & San Francisco Railroad with routing instructions from shipper; that those routing instructions were observed, and that, except as noted, correct charges were assessed thereon:

Car S. & M. 21006 from Miami, Ind. T., January 22, 1907, overcharged \$10.12.

Car C. R. I. & P. 11710 from Quapaw, Ind. T., December 26, 1906, undercharged \$5.05.

Car C. I. & L. 7019 from Columbus, Kans., January 10, 1907, undercharged \$4.41.

Car A. T. & S. F. 19133 from Beulah, Kans., December 28, 1906, undercharged \$0.01.

Car C. B. & Q. 29697 from Quapaw, Ind. T., etc., December 13, 1906.

We find that car C. B. & Q. 21492 from Columbus, Kans., etc., February 16, 1907, was undercharged \$1.10.

We find that the following shipments were originally consigned to Memphis and were reshipped from there; that there was no tariff authority for reconsignment at Memphis and that, except as noted, correct charges were assessed.

Car M. P. 5291 from Lockwood, Mo., February 16, 1907.

Car A. T. & S. F. 30131 from Lockwood, Mo., February 13, 1907, undercharged \$1.

We find, therefore, that instead of complainant being entitled to reparation against defendant Yazoo & Mississippi Valley Railroad in the sum of \$319.20, with interest, as stated in previous report and order, complainant was and is entitled to no reparation whatever against that defendant, but is entitled to reparation against defendant St. Louis & San Francisco Railroad for misrouting in the sum

of \$128.87, with interest. Complainant owes defendants and other carriers that participated in movement of the shipments that were not misrouted by the Frisco a net undercharge of \$1.45.

The Commission's order of June 14, 1909, in this case will be vacated. The amount paid to complainant thereunder by defendant Yazoo & Mississippi Valley Railroad should, of course, be at once refunded.

An order in accord herewith will be entered.

It seems proper to suggest that, while not intimating that defendants intended or wished to mislead the Commission, we do not find reasonable excuse for the assumption and consequent inaccuracies that characterized this case. The Commission is entitled to a correct statement of the facts upon which it bases its decision and order, and the law is not satisfied if, even through carelessness or indifference, facts are incorrectly presented, and, as a result, justice miscarries.

18 L. C. C. Rep.

No. 3023.  
SOUTHERN TIMBER & LAND COMPANY  
v.  
SOUTHERN PACIFIC COMPANY ET AL.

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*Submitted March 1, 1910. Decided April 11, 1910.*

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Rate applied on hub blocks from Will's Point, Tex., to Stockton, Cal., found unreasonable, and the subsequently established lower rate prescribed for the future. Reparation awarded.

*David E. Beem* for complainant.

*F. C. Dillard and W. H. Connor* for Southern Pacific Company and Galveston, Harrisburg & San Antonio Railway Company.

*Baker, Botts, Parker & Garwood and F. C. Dillard* for Galveston, Harrisburg & San Antonio Railway Company.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

This complaint was brought to obtain reparation of \$216.80 on one carload of elm hub blocks in the rough, weighing 54,200 pounds, shipped December 10, 1907, by complainant, a manufacturer of that article, from Fruitvale, Tex. (but billed from Will's Point, Tex.), to Stockton, Cal., on which there was collected \$677.50, at rate of \$1.25 per 100 pounds. It is alleged that this rate was unjust and unreasonable to the extent that it exceeded 85 cents per 100 pounds.

Will's Point is upon the main line of the Texas & Pacific Railway, and the natural movement of this shipment would have been to El Paso and thence via the Southern Pacific lines to destination. In making out its case the complainant relies largely upon the fact that the rate from Texarkana to Stockton was, at the time of this shipment, 85 cents per 100 pounds, and that the movement from Texarkana would have been through Will's Point. The defendants excuse the higher rate at the intermediate point by undertaking to show that rates from more easterly destinations have been influenced by water competition.

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If the rate charged upon this shipment was excessive *per se* the prevalence of competitive conditions in eastern territory is unimportant. In *Burgess v. Transcontinental Freight Bureau*, 13 I. C. C. Rep., 668, we held that a rate not exceeding 75 cents per 100 pounds should be applied to the transportation of hard-wood lumber from Chicago points and points farther west to Pacific coast terminals. That decision was based upon the holding that a higher rate would be inherently unreasonable. The present commodity would be somewhat more valuable and might well take a somewhat higher rate than hard-wood lumber. The distance from Will's Point is considerably less than that from Chicago and Chicago points. On January 1, 1909, the rate on hub blocks in the rough from most Texas points, including Will's Point, to Pacific coast terminals, was reduced to 85 cents, which is the present rate.

Upon full consideration, we are of the opinion that the rate of \$1.25 per 100 pounds, which was applied to this shipment, was unjust and unreasonable; that a rate not exceeding 85 cents should have applied and that the complainant is entitled to recover the sum of \$216.80, with interest, that being the difference between the amount collected and what would have been collected upon the 85-cent basis.

We are further of the opinion that the rate of 85 cents should not be exceeded for the future, and an order will be entered accordingly.  
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No. 2527.  
SCHULTZ-HANSEN COMPANY  
v.  
SOUTHERN PACIFIC COMPANY ET AL.

Submitted February 2, 1910. Decided May 2, 1910.

Complaint alleges that charges made by defendants for loading and unloading carload freight are unreasonable and discriminatory; *Held*:

1. That defendants' rules are improper and do not conform to the requirements of the law.
2. That it is not unlawful to assess a reasonable charge for loading or unloading, or for assisting in loading or unloading, carload freight, provided the service to be rendered and the charge to be assessed are clearly stated in tariff.
3. That carrier must have the right to unload carload shipment and release its equipment when consignee has neglected to unload within the free time provided in carrier's tariff, and that carrier may not, because of consignee's neglect, be required to perform that service without reasonable compensation therefor. The rule and practice in this regard must, however, be nondiscriminatory.
4. That defendants' rules are not unduly discriminatory because they provide for loading and unloading without charge carload shipments of specified commodities at specified points where peculiar conditions obtain.
5. That defendants must cease and desist from performing services for consignors or consignees in connection with shipments and from assessing charges for such services, except as such services and charges are clearly provided for in their tariffs.

*J. O. Bracken* for complainant.

*F. C. Dillard, P. F. Dunne, C. W. Durbrow, and Wm. J. Herrin* for Southern Pacific Company.

*Robert Dunlap, T. J. Norton, and E. W. Camp* for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

**CLARK, Commissioner:**

This is a complaint that defendants' rules relative to loading and unloading interstate carload shipments are unreasonable and discriminatory, and that defendants' charge of 20 cents per ton of 2,000 pounds for services rendered in loading and unloading interstate carload package shipments at San Francisco, Cal., is unreasonable and unjust.

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In San Francisco for many years prior to December 1, 1906, the defendants made car-door delivery of transcontinental package freight in carloads, and received carload shipments of package freight destined to transcontinental points at the car door without charge. This practice was followed by the Southern Pacific at the time when the Santa Fe reached San Francisco in 1900. On November 23, 1906, the Southern Pacific notified shippers, consignees, and draymen in San Francisco by circular that, effective December 1, 1906, it would discontinue furnishing free of charge assistance in loading and unloading carload freight. On the same date the Santa Fe also discontinued rendering such assistance free. While defendants rendered assistance without charge on transcontinental shipments for a long period of time prior to December 1, 1906, it appears that charges were collected by the Southern Pacific for such assistance on shipments from and to Nevada, New Mexico, and Arizona points.

It is asserted by the Southern Pacific that so far as shipments local to its lines are concerned a charge for loading and unloading carload freight has been exacted at San Francisco and other points since 1872. In other words, that when the Southern Pacific controlled the entire movement a charge was made when it was called upon to load or unload carload freight, but that until the amendment of the act in 1906 it was unable to insist upon the collection of such charge where shipments moved over its eastern connections.

The questions presented for determination are whether or not the provisions of the tariffs of defendants are lawful and proper, and whether or not the charges for the service rendered since December 1, 1906, are unreasonable.

Generally speaking, throughout the United States shippers are required to load, and receivers are required to unload, freight in carloads. This rule is departed from at times or in places where competitive or other conditions lead to an exception to it. The law and the rules of the Commission require that tariffs must provide in specific terms the character of and the charges for the service to be rendered.

Since 1872 tariffs to which the Southern Pacific has been a party have required that consignors shall load, and that consignees shall unload, carload shipments. It also appears that there were similar provisions in tariffs to which the Santa Fe was a party from a time long prior to its entry into San Francisco. Notwithstanding the provisions of the tariffs referred to, there grew up in San Francisco at an early date, commencing at least thirty years ago, the practice of furnishing assistance to consignees in unloading, and to consignors in loading, transcontinental carload package freight. This



assistance consisted in delivering packages to and taking them from the car doors, and for this service no charge was made.

On freight moving by water by what is known as the Sunset Gulf route from New York to Galveston, and thence by rail to San Francisco, the integrity of carload lots was not, until very recent years, preserved. Freight which had been sent forward in a carload lot and at a carload rate arrived in San Francisco dispersed through two or more cars. It could not, therefore, well be unloaded by the consignee, but had to be segregated and again assembled by the carrier. For this service the carrier could not well make a separate charge. Now and for a number of years past freight moving via Galveston is in nearly all cases so handled as to keep carload lots together. The evidence is that not to exceed 5 per cent of the water and rail shipments now reach San Francisco in broken car lots. They can now be delivered on team track and can be there unloaded by the consignees. The Santa Fe freight via the Mallory Line to Galveston is handled in the same way. The free unloading of this traffic that came by water and rail led to waiving the unloading charges on freight that moved all rail.

With this custom grew up another which had quite as much influence on the service which the carrier performed. Draymen in San Francisco became agents of receivers and shippers to a much larger extent than is customary elsewhere. They receive notices of the arrival of freight, receipt for the same and attend wholly to its acceptance, and also attend to all the details with respect to carload shipments to transcontinental points. They receive the freight at the car door and take it from the car door. This method was satisfactory to both carriers and shippers for many years. As business increased it was found by defendants that the expense to them was also greatly increased, and it is asserted by them that as soon as they were able to do so they imposed charges for the service.

The so-called Hepburn Act requires that carriers' tariffs shall name all terminal charges for any service rendered. As soon as was possible under the circumstances existing in San Francisco the defendants issued the circular above mentioned, but did not at the same time amend their tariffs.

The terminal tariff of the Southern Pacific contains the following provisions with respect to loading and unloading carload shipments:

Rates named in this company's tariffs, or tariffs to which this company is a party, do not include the expense of loading or unloading carload freight. This company, under all of its tariffs, or tariffs to which it is a party, reserves the right to load and unload freight at a charge of 20 cents per ton of 2,000 pounds, *except* grain at Port Costa, Cal. (see item 30 of tariff), in addition to the charges for transportation (see note), which charge includes the expense of dunnage when loading is performed by this company. When such service is rendered by this company the above will be the

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basis of charge, subject, however, to published storage and demurrage rules in force at point of receipt or delivery.

**NOTE.**—No charge will be made when loading or unloading is performed by use of power derricks of this company, provided laborers other than one engineer to operate the mechanism of derrick assigned by this company are employed by the shipper or consignee.

Similar provisions were carried in previous tariffs from April 1, 1908. The rule in the tariffs of the Atchison, Topeka & Santa Fe is similar to that of the Southern Pacific. Effective February 13, 1907, the following provision is found in the Southern Pacific tariffs:

Loading and unloading carload shipments. Rates named in this company's tariff do not include the expense of loading and unloading carload freight. If this service is not performed by the shippers or consignees within the time allowed by the published rules in force at points of receipt or delivery this company reserves the right to perform such loading or unloading and charge therefor at 20 cents per ton of 2,000 pounds, which charge includes the cost of dunnage, if necessary, when loading is performed by this company.

Section 6 of the act requires that carriers shall file tariffs with the Commission showing all their rates, fares, and charges and all privileges and facilities granted or allowed, and also all rules and regulations which in anywise change or affect their rates or the value of the service rendered to the passenger or shipper. The purpose of this is to secure to the public knowledge of the rates to be charged by carriers for services rendered. No proper purpose would be served by stating the amount of the charge unless the services and privileges covered by that charge are also stated. Whenever any service is rendered beyond the ordinary receiving, transporting, and delivering of freight the precise character of that service should appear in the printed schedule. Services rendered by carriers in loading and unloading carload freight and charges for such services are analogous to other terminal services and charges such as demurrage, milling in transit, storage, switching, etc., and the charges for and the precise character of the service must be published in the tariffs.

An examination of the present tariffs of defendants clearly shows that they provide that defendants may load or unload carload shipments at any time for any shipper, or may refrain from so doing. The loading and unloading is to be done at the option or will of the carrier. In our opinion such a tariff provision is improper. We see no objection to providing in a tariff that when a consignee has neglected to unload a carload shipment within the free time provided in the carrier's demurrage rule, the carrier may unload it, and that when that is done a charge will be assessed therefor. If, however, the demurrage charge per day should be more than the charge for unloading a car, it would be necessary to provide that such shipments

*will be* unloaded by carrier, as otherwise favoritism might be practiced and discrimination be alleged. The carrier must have the right, after consignee's free time has expired, to unload and release its equipment, and it can not by neglect of consignee to unload his shipment be required to unload same without proper compensation therefor. The rule and the practice must, however, be nondiscriminatory.

The terminal facilities in San Francisco for loading and unloading carload freight by consignors and consignees appear to be adequate. There are sufficient team tracks, spurs, sidings, and shed room to permit shippers to receive and forward freight. Defendants assert that they prefer that shippers should load and unload their own freight; that help is not furnished except on the request of shippers; and that in no case has a shipper been denied an opportunity to load and unload shipments. The fact that shippers request assistance from defendants and that a charge is now made for such assistance bears on the reasonableness of the charge from the shipper's standpoint, but does not establish in any way that the tariff provision is nondiscriminatory, or that it otherwise conforms to the mandate of the statute. That defendants prefer that shippers should load and unload carload freight and that they are always permitted to do so may be true, but the evidence shows that more than 75 per cent of the carload freight forwarded from and received at San Francisco is loaded and unloaded in part by the defendants.

Turning now to the question of the reasonableness of the charge, it is to be observed that the tariffs in question provide that 20 cents per ton of 2,000 pounds will be charged when the defendants load or unload carload freight. The evidence shows that as a matter of fact the defendants have never actually loaded or unloaded more than a very small percentage of the carload freight in San Francisco upon which the tariff charge for loading or unloading has been collected.

Loading carload freight by the carrier means the performance by it of service which the shipper ordinarily performs—that is to say, loading consists of taking the freight from a wagon, platform, or warehouse and stowing it in the car for shipment—and unloading consists of taking the freight from the car and placing it on a wagon or platform or in a warehouse. The defendants have merely rendered assistance to shippers in making car-door delivery and in receiving freight at the car door. There is no provision in the tariffs of either defendant which authorizes the performance of or any charge for that service. No doubt it is ordinarily less expensive to the carriers to make car-door delivery and to receive freight at the car door than to do the loading and unloading. More service is

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rendered the shipper whose carload of freight is unloaded than is rendered the shipper who receives his goods at the car door.

It is not for us to here determine what would be a reasonable charge for loading and unloading carload freight in San Francisco. The evidence is directed solely to the question of the reasonableness of the charge for car-door receipt and delivery. Inasmuch as tariffs of defendants do not authorize a charge for that service, we express no opinion as to the reasonableness of the charge that has been made since 1906, except to say that if 20 cents per ton is a reasonable charge for loading and unloading it is no doubt somewhat excessive for car-door receipt and delivery.

Complainant contends that because defendants made no charge for furnishing assistance in loading and unloading carload freight prior to 1906, any charge since that time is unreasonable. Reliance is had on the presumption that because a certain practice affecting rates has been maintained for a long period of time it is reasonable. We are of opinion that this presumption, whatever force it may have under other circumstances, has but little weight in this connection. It does not follow that because these defendants rendered services to shippers in San Francisco which they did not render to shippers elsewhere such practice must or should be continued indefinitely. So far as appears the transcontinental carload rates were made and have been maintained in consideration of the service of loading and unloading being performed by consignors and consignees. Tariffs to which these defendants were parties have so provided for many years. Generally speaking, throughout the country loading and unloading carload freight is considered extra service if performed by carriers. If for competitive or other reasons which were satisfactory to the carriers this practice were departed from in San Francisco and the reasons for this departure have disappeared, it seems to us that the carriers are justified in making a reasonable charge for any service which they perform over and above transportation and delivery.

*Wholesale Fruit & Produce Asso. v. A., T. & S. F. Ry. Co.*, 17 I. C. C. Rep., 596; *Utica Traffic Bureau v. N. Y. C. R. R. Co.*, 18 I. C. C. Rep., 271.

We find that the tariffs here in question are discriminatory and to that extent unlawful. An appropriate order will be issued requiring the defendants to cease and desist from maintaining tariffs containing the discriminatory provisions. We further find that the defendants have not in the past and do not now comply with the provisions of their tariffs with respect to the services rendered and the charges therefor. They will, of course, cease and desist from the practice of rendering services and from assessing charges not in accordance with the provisions of their published tariffs.

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Complainant also contends that exceptions were made in the tariffs with respect to loading charges on grain at Port Costa, Cal., and with respect to shipments of salmon from northern points, and because thereof the tariffs were discriminatory. We have merely to observe that no discrimination because of these exceptions is shown in this record. Defendant Southern Pacific justifies the exceptions in its tariff because of the compelling force of water competition. It is assumed that when defendants reform their tariff rules the new rules will be so framed and observed as not to work out any discrimination.

18 L. C. C. Rep.

No. 2945.

GLAVIN GRAIN COMPANY

v.

CHICAGO &amp; NORTH WESTERN RAILWAY COMPANY ET AL.

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*Submitted February 18, 1910. Decided April 4, 1910.*

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Defendants' rate on corn in carloads applied to complainant's shipment found unreasonable and the lower rate now in effect prescribed for the future. Reparation awarded.

*George A. Schroeder* for complainant.

*William G. Wheeler* for defendants.

#### REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

On July 29, 1908, complainant shipped a carload of corn, weighing 48,100 pounds from Glidden, Iowa, to Chetek, Wis., on which a rate of 25 cents per 100 pounds and a total charge of \$120.25 was collected. The rate paid is alleged to have been unreasonable to the extent that it exceeded 19½ cents, and reparation is asked in the sum of \$27.65, on the basis of the latter-named rate.

At the time the shipment moved the defendants had in effect a rate of 20.1 cents from Nebraska points to Duluth, Minn. No routing was provided for by this tariff, and it would have been permissible for the traffic to move through Glidden. The haul under this rate would be from a representative point in Nebraska anywhere from 548 to 980 miles to Duluth. The distance from Glidden to Chetek via De Kalb, Ill., is about 656 miles. Distance alone considered, the 25-cent rate appears to be excessive. The defendants apparently recognized that their rate between the above-named points was too high by filing a tariff effective October 1, 1908, about two months after this shipment moved which named a rate of 19½ cents on this commodity, and this rate is still in effect.

We find that the rate of 25 cents assessed was unreasonable to the extent that it exceeded 19½ cents. Reparation in the sum of \$27.65, with interest, is awarded and defendants will be required to maintain a rate on corn in carloads not to exceed 19½ cents between said points for a period of not less than two years.

No. 2813.  
**KIEL WOODENWARE COMPANY**  
*v.*  
**CHICAGO, MILWAUKEE & ST. PAUL RAILWAY  
COMPANY.**

*Submitted October 12, 1909. Decided April 4, 1910.*

By supplement to its tariff defendant limited the application of a rate of \$2.50 per 1,000 feet on logs from certain points to Kiel, Wis., to sawed logs 10 feet or more in length, the rate having previously had no limitation in that respect, and by reason of failure to post said supplement as required by the act, complainant was not advised of the change in rate and on certain shipments of logs made by it the rate was corrected to 4 cents per 100 pounds. It is admitted that had complainant been informed of the change in rate, it could and would have sawed the logs in length to which the \$2.50 rate was applicable; *Held*, That the Commission may award reparation in the amount of the difference between the rate exacted from complainant and the rate under which the traffic would have been forwarded had defendant not failed to post its tariff.

*H. C. Mesch* for complainant.  
*William Ellis* for defendant.

REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

This case is submitted by stipulation upon complaint and answer. Between the months of December, 1907, and October, 1908, complainant shipped 33 carloads of logs from Granite Bluff, Spur 219, Iron Mountain and Groveland Mine, Mich., over defendant's line to Kiel, Wis. Prior to the time these shipments were made defendant had in force a rate of \$2.50 per 1,000 feet from the shipping points in question, without limitation upon the size of the logs. On August 20, 1907, it issued a supplement to its tariff limiting the application of the \$2.50 rate to sawed logs 10 feet or more in length. This supplement was filed with the Commission and distributed to defendant's agents, but through some error or mistake no copy reached the agent at Kiel. The logs in question were sawed in lengths of 4, 6, and 8 feet, and were shipped at the prior rate of \$2.50 per 1,000 feet. After

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several of the shipments had moved, the error in billing was discovered and rate corrected to 4 cents per 100 pounds, involving payment by complainant of \$326.75 above what would have accrued under the \$2.50 rate. Complainant alleges, and defendant admits, that had it been informed of the change in the rate, by posting of the tariff at Kiel, it could and would have sawed its logs in the length to which the \$2.50 rate was applicable, and asks reparation by reason of defendant's failure to post the tariff as required by law.

The question presented by these facts is whether the Commission has authority to award reparation to the shipper on account of damage suffered by reason of defendant's failure to post its tariff in accordance with the statute. The sixth section required the defendant to post the supplement at Kiel and that requirement was not complied with. In consequence of this failure the complainant was damaged.

Section 8 of the act provides:

That in case any common carrier subject to the provisions of this act shall do \* \* \* or shall omit to do any act, matter, or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of the damages sustained in consequence of any such violation of the provisions of this act.

Section 9 provides:

That any person or persons claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act.

The question to be decided is novel, and an examination of the reports of the federal courts and of this Commission discloses no case precisely in point. In *Texas & Pacific Ry. Co. v. Cisco Oil Mill*, 204 U. S., 449, the claim was for the recovery of an excessive rate. For the purpose of showing that no rate had been established under the provisions of the act to regulate commerce, the plaintiff undertook to prove that the schedules of the defendant had not been posted in its station as required by the sixth section. The court held that even if this were true, nevertheless, as the schedule had been properly filed in the office of the Commission the rate thereby became effective and binding. There was no allegation of special damage to the plaintiff by reason of failure to post the tariffs, and the court expressly stated that it did not decide whether, if damage had resulted from failure to post, such damage could be recovered. The following is its language:

Whether, by the failure to post an established schedule, a carrier became subject to penalties provided in the act to regulate commerce, or whether, if damage had been occasioned to a shipper by such omission, a right to recover on that ground alone would have obtained, we are not called upon in this case to decide.

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In the case before us damages did accrue and are, in the opinion of the Commission, recoverable.

The Commission held, in *Joynes v. P. R. R. Co.*, 17 I. C. C. Rep., 361, that it had jurisdiction in case of a violation of the act to award "rate damages," but not to give "general damages." In the present case the complainant claims to recover the difference between the rate which it would have paid had the schedule been posted and the rate which it did in fact pay. Its damages are therefore assessable merely by reference to the rate, and are, apparently, such damages as could be awarded in conformity with the decision in the *Joynes case*.

We therefore find that by reason of defendant's failure to publish and post its tariff as required by law, complainant suffered damage in the sum of \$326.75 and an order will be entered awarding reparation in that amount, with interest.

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No. 2809.

DELRAY SALT COMPANY

v.

DETROIT, TOLEDO & IRONTON RAILWAY COMPANY  
ET AL.

(ORIGINAL PETITION.)

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*Submitted March 28, 1910. Decided April 11, 1910.*

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Rate charged complainant on shipments of salt from Detroit to Memphis was the correct tariff rate and not found unreasonable.

*Joseph P. Tracy* for complainant.

*Earl F. Drake* for Detroit, Toledo & Ironton Railway Company.

*Charles A. Schmettau* for Toledo, St. Louis & Western Railroad Company.

*Sloss D. Baxter* for Illinois Central Railroad Company, Mobile & Ohio Railroad Company, and Southern Railway Company.

#### REPORT OF THE COMMISSION.

**PROUTY, Commissioner:**

This docket embraces one original and two supplementary petitions, each of which will be disposed of in a separate opinion and will be designated "original petition," "first amendment," and "second amendment."

In the original complaint the petitioner alleges that the rate of 16 cents per 100 pounds on salt from Detroit, Mich., to Memphis, Tenn., was excessive and that a reasonable rate would have been 13½ cents, and asks for reparation in the sum of the difference between the above-named rates. The complainant shipped two carloads of salt weighing 37,500 pounds each from Detroit to Memphis on March 4 and 6, 1909, on which charges of \$60 were assessed on each car, or a total charge of \$120. Reparation amounting to \$8.75 on each car, or a total of \$17.50 is demanded.

The defendants, Detroit, Toledo & Ironton Railway Company and Toledo, St. Louis & Western Railroad Company, in connection with  
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the Illinois Central Railroad Company, had in effect from August 9, 1906, to February 15, 1909, a joint rate on salt from Detroit, Mich., to Memphis, Tenn., of  $13\frac{3}{4}$  cents per 100 pounds. On February 15, 1909, this rate was canceled and a joint rate of 16 cents substituted therefor. There was also in effect a rate on salt via the above-named carriers from Detroit to East St. Louis of  $5\frac{3}{4}$  cents for points beyond between January 17, 1907, and March 31, 1909. At the time the shipments complained of moved the Illinois Central had in effect a rate on this commodity of 8 cents per 100 pounds from East St. Louis to Memphis, making a through combination rate of  $13\frac{3}{4}$  cents. By Tucker's tariff, I. C. C. No. 95, effective March 1, 1909, a local rate of  $11\frac{1}{4}$  cents per 100 pounds was named on salt from Detroit to East St. Louis, but this tariff made no provision for canceling the  $5\frac{3}{4}$ -cent proportional rate from Detroit to East St. Louis for points beyond. The defendant, Detroit, Toledo & Ironton Railway, stated at the hearing and introduced considerable correspondence to substantiate its claim that the proportional rate of  $5\frac{3}{4}$  cents was to have been canceled by Tucker's tariff above cited which named the  $11\frac{1}{4}$ -cent local rate to East St. Louis and the 16-cent rate to Memphis. The  $5\frac{3}{4}$ -cent rate was canceled April 1, 1909, by a supplement to Tucker's tariff, and evidence shows clearly that this rate remained in effect through error.

The complainant contends that the rate legally in effect at the time of the shipment was the combination of  $13\frac{3}{4}$  cents, and this is the first question for determination.

The fact that the defendants attempted but failed to cancel the  $5\frac{3}{4}$ -cent proportional rate is immaterial. There were in effect at the time these shipments moved two rates, a joint rate of 16 cents from Detroit to Memphis, and a proportional rate of  $5\frac{3}{4}$  cents from Detroit to St. Louis, for shipment beyond, which, with the local rate of the Illinois Central, produced a through rate of  $13\frac{3}{4}$  cents. The proportional rate of  $5\frac{3}{4}$  cents could be used in constructing the rate to any point beyond St. Louis, but no particular point was designated. The 16-cent rate applied to Memphis specifically, and in accordance with the general rule of the Commission the specific rate must govern. We hold, therefore, that the 16-cent rate was properly assessed.

The complainant further contends that the 16-cent rate was unreasonable, and as evidence of this points to the fact that for two years a rate of  $13\frac{3}{4}$  cents had been maintained. The distance from Detroit to Memphis is about 800 miles and the rate of 16 cents yields the carrier about 4 mills per ton-mile. In the absence of some further showing than the mere fact of the maintenance of this rate for the two preceding years, we can not find that it is unreasonable.

The complaint will be dismissed.

No. 2809.  
DELRAY SALT COMPANY  
v.  
MICHIGAN CENTRAL RAILROAD COMPANY ET AL.  
(FIRST AMENDMENT.)

*Submitted March 28, 1910. Decided April 11, 1910.*

Reparation awarded on complainant's shipment of salt from Detroit, Mich., to Patricksburg, Ind.

*Joseph P. Tracy* for complainant.

*O. E. Butterfield* for Michigan Central Railroad Company.

*Geo. W. Kretzinger* for Chicago, Indianapolis & Louisville Railway Company.

REPORT OF THE COMMISSION.

**PROUTY, Commissioner:**

On July 2, 1908, the complainant shipped a carload of salt weighing 38,800 pounds from Detroit, Mich., to Patricksburg, Ind., via the Michigan Central and the Chicago, Indianapolis & Louisville railways, on which a rate of 12½ cents per 100 pounds was assessed, aggregating a total charge of \$48.63, which was paid.

At the time the shipment moved there was in effect a joint rate via the Grand Trunk Western Railway and the Chicago, Indianapolis & Louisville Railway of 8½ cents between these same points. The complainant claims reparation by the difference between these rates.

August 29, 1908, the defendant carriers published a rate of 8½ cents from Detroit to Patricksburg, which remained in effect until March 1, 1909, when it was advanced to 10½ cents, which is the present rate. The defendants concede that the rate of 12½ cents was unreasonable and that reparation should be awarded upon the basis of the present 10½-cent rate; but the complainant contends that the present rate is unreasonable.

The only evidence adduced to show the unreasonableness of the 10½-cent charge was the fact that a lower rate of 8½ cents was, at the time of the movement, in effect via a competing route, which does not of itself establish the unreasonableness. It appeared upon the hearing that another complaint had been filed directly attacking the reasonableness of the present 10½-cent rate. The complaint in this case did

not ask the establishment of a rate for the future and was only brought to recover reparation.

Complainants should not be permitted to multiply complaints in this manner. All questions relating to the reasonableness of the rate and reparation should be heard and determined in one proceeding. In the present instance, however, we shall award that reparation which the defendants admit to be due. We can not find, upon this record, that the 10½-cent rate is excessive.

An order will be issued against the defendants for the payment of \$7.11, with interest.

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No. 2809.

DELRAY SALT COMPANY

v.

MICHIGAN CENTRAL RAILROAD COMPANY ET AL.

(SECOND AMENDMENT.)

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*Submitted March 28, 1910. Decided April 11, 1910.*

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Reparation awarded against initial carrier for misrouting complainant's shipment of salt transported from Detroit, Mich., to Houston, Miss.

*Joseph P. Tracy* for complainant.

*O. E. Butterfield* for Michigan Central Railroad Company.

*Sloss D. Baxter* for Illinois Central Railroad Company, Mobile & Ohio Railroad Company, and Southern Railway Company.

#### REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

August 10, 1908, the complainant shipped a carload of salt from Detroit, Mich., to Houston, Miss., weighing 50,700 pounds, upon which a rate of 28½ cents was assessed, and total charges collected amounting to \$143.65, that being the legal charge via the route over which the shipment moved. The routing specified by the shipper was Michigan Central, Big Four, and Southern Railway via Cairo, over which route the rate at that time was 21½ cents. The Michigan Central admits that it misrouted the shipment, and that company is therefore liable for the difference between the charges collected and what would have accrued had the routing instructions of the complainant been followed, or \$33.80, with interest.

An order will be issued accordingly.

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No. 2992.

## PLATTEN PRODUCE COMPANY

v.

KALAMAZOO, LAKE SHORE &amp; CHICAGO RAILWAY COMPANY ET AL.

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*Submitted February 17, 1910. Decided April 11, 1910.*

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Reparation awarded because of erroneous routing of shipment of grapes transported from Paw Paw, Mich., to Green Bay, Wis.

*George A. Platten* for complainant.

*William Ellis* and *S. H. Vaughan* for Chicago, Milwaukee & St. Paul Railway Company.

## REPORT OF THE COMMISSION.

**PROUTY, Commissioner:**

This is a claim for reparation resulting from misrouting a shipment of grapes. On September 20, 1909, the complainant shipped a carload of grapes weighing 24,944 pounds from Paw Paw, Mich., to Green Bay, Wis. Freight charges at the rate of 65 cents per 100 pounds were assessed on a minimum of 33,000 pounds, aggregating \$214.50. Icing charges amounting to \$30.13 were also collected, making a total charge of \$244.63 for the entire transportation. There was a commodity rate in effect at the time the shipment moved of 33½ cents across Lake Michigan by car ferry. On the waybill issued by the Kalamazoo, Lake Shore & Chicago Railway Company the routing was given via Pere Marquette and the Chicago, Milwaukee & St. Paul. It is the usual and natural route for a shipment to move across the lake by car ferry when the routing is given as above. This shipment, however, moved via Chicago through the erroneous diversion of the car by the Pere Marquette Railway, and via this route the 65-cent rate applied.

The minimum on grapes via both routes was 20,000 pounds, and the charges should, therefore, have been assessed upon actual weight. From this results a straight overcharge of \$52.37, for which all the defendants engaging in the transportation via the route over which it moved are responsible, and which should be repaid, with interest.

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The error of the Pere Marquette Railroad in erroneously routing the car has occasioned damage to the complainant by the difference between the rate of 65 cents and the rate of  $33\frac{1}{4}$  cents upon the actual weight of the shipment, and the complainant is entitled to recover of that company on this account \$78.57, with interest.

The complainant also claims that had the shipment gone by the proper route a single initial icing would have been sufficient, of which the cost would have been \$12.50. We find that such is the fact, and that the additional icing charges were occasioned by the misrouting of the car, and that, therefore, the complainant is entitled to recover on this account a further sum of \$17.63, with interest.

An order will be entered accordingly.

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No. 3071.  
ALEXANDER SPRUNT & SON  
v.  
SEABOARD AIR LINE RAILWAY.

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*Submitted March 25, 1910. Decided April 4, 1910.*

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Finding that many of its through rates on cotton to Wilmington, N. C., exceeded the sum of its local rates on Columbia, S. C., the defendant made a general readjustment involving substantial increases, among other points, from North and Olar, S. C. Within six weeks the former rate from each point, which had been in effect for eight years or longer, was restored and subsequently remained in effect for nearly a year. Complainants having shipped cotton during the interval are awarded reparation on the basis of the restored rates.

*Charles D. Drayton* for complainants.

*Willis H. Fowle* for defendant.

REPORT OF THE COMMISSION.

**HARLAN, Commissioner:**

Between October 16 and November 21, 1908, the complainants shipped from North, a station on the Seaboard Air Line in the state of South Carolina, to Wilmington, in the state of North Carolina, 9 lots of cotton, comprising 247 bales and weighing in the aggregate 120,721 pounds; between October 15 and December 1, 1908, they also shipped to the same destination 18 lots of cotton, consisting of 430 bales and weighing in the aggregate 224,455 pounds, from Olar, a point on the same line, also in the state of South Carolina. Upon the shipments from North the defendant exacted a rate of 45 cents per 100 pounds, and on the shipments from Olar a rate of 51 cents per 100 pounds. The complainants allege that any rates in excess of 36 cents from North and 32 cents from Olar would have been unreasonable, and on this basis they demand reparation in the sum of \$535.08. Both places are noncompetitive points, North being approximately 247½ miles distant from Wilmington, while Olar is about 278½ miles. Cotton moves locally from both points to Wilmington.

The tariff records of the Commission indicate that on September 12, 1900, the defendant's rate from North was 36 cents per 100 pounds and remained unchanged, being carried forward in all its new tariff

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issues, until October 15, 1908. For a like period of time the rate from Olar was maintained at 32 cents per 100 pounds. The existence of a lower rate from the more distant point was not definitely explained at the hearing, but the general freight agent of the defendant was under the impression that, in its inception, it was the result of the competition of the Atlantic Coast Line, which at that point approaches and for some miles parallels the tracks of the defendant, thus making it possible for producers to take their cotton to either line for movement to Wilmington. Olar had enjoyed a differential of 4 cents for so many years that the precise reason for the adjustment had been lost sight of, and the explanation given was simply a plausible inference on the part of the defendant's only witness at the hearing.

Under a tariff that became effective on October 15, 1908, this relation of rates as between the two points was disturbed, the complainants having called the attention of the defendant to the fact that certain of its through rates exceeded the sum of its local rates; the result was a realignment of all its through rates on cotton moving to Wilmington from points on that division of its line, the new through rates being based on the sum of the local rates into and out of Columbia. From some of its local points the readjustment involved a reduction of the through rates previously in effect, but from other points an advance resulted. In the case of North the advance was a substantial one, the new through rate being fixed at 45 cents as compared with the previous rate of 36 cents; the increase was even more substantial from Olar, the new through rate from that point being fixed at 51 cents as compared with the previous rate of 32 cents. These were the rates collected on the shipments in question and of which complaint is made. They were the subject of an immediate protest by the complainants, and a sharp but brief correspondence ensued, in the course of which the defendant admitted that the through rates as fixed from those two points were a mistake. On December 4, 1908, after the advanced rates had been in effect for scarcely more than a month and a half, the previous rates were restored from both points. But in the meantime these shipments had been made and the higher rates had been collected.

After being restored the original rates, 36 cents from North and 32 cents from Olar, remained in effect until September 17, 1909, or for nearly a year after the shipments in question had moved; the rate from North was then advanced to 40 cents and from Olar to 37 cents per 100 pounds. These rates, however, included compression, for which service the defendant paid an independent compress company at the rate of 7½ cents per 100 pounds, leaving a net rate from North of 32½ cents and from Olar 29½ cents per 100 pounds. These are the

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rates now in effect. While the complainants make no demand for reparation on the basis of these new rates, but rest their claim wholly upon the restored rates of 36 cents from North and 32 cents from Olar, the new rates are here referred to in order to call attention to the fact that in this new tariff Olar was still given the benefit of a substantially lower rate, although 31 miles more distant from Wilmington than is North.

We do not understand that the defendant objects to an award of reparation, on the basis of the restored rate of 36 cents, upon the shipments made from North. The record clearly justifies such an order, and upon the facts shown of record we find that at the time the shipments moved any rate from North in excess of 36 cents per 100 pounds was an unreasonable rate. The complainants are therefore entitled to reparation on those shipments on that basis. The only substantial point in the case is whether they shall have reparation on their shipments from Olar on the basis of the restored 32-cent rate, or whether reparation shall be computed at a higher rate level. The position now taken by the defendant is that there is no good reason for demanding less on cotton from Olar, the more distant point, than is demanded at the same time from North; it insists, in fact, that the rate from Olar should be higher than the rate from North; and it proposes at once to readjust the relation between the two points by fixing a higher rate from Olar. So far as we are advised by the record, we incline to the view that Olar ought to take a higher rate to Wilmington than North, the less distant point; while there may be some competition from the Atlantic Coast Line for the cotton grown in the vicinity of Olar, it does not seem substantial enough to justify a lower rate from that point than is demanded from North. Nevertheless, in view of the fact that such a relation of rates had existed between the two points for seven or eight years, and was promptly restored after it had been briefly disturbed in the fall of 1908, and remained in effect for nearly a year, we are of the opinion that the complainants are entitled to reparation on the shipments from Olar on the 32-cent basis. The interposition, for a few weeks only, of substantially higher rates is admitted by the defendant to have been a mistake; from any point of view, they were experimental rates that were quickly withdrawn, the old rates being voluntarily restored and then maintained for nearly a year longer. As a matter of fact the tariff under which the old rates were restored was filed with the Commission on October 30, 1908, only fifteen days after the higher rates here complained of had become effective. In sending the complainants a copy of this tariff the principal defendant, under date of December 9, referred to it as publishing "rates on the proper basis to Wilmington, N. C., from stations south of Columbia, S. C."

Under all the circumstances shown of record we regard it as entirely consistent with substantial justice to deal with the shipments from Olar as if the defendant had not intended to put the higher rates in effect at all. We, therefore, find that the rate exacted on the shipments from Olar was unreasonable and that the complainants are entitled to reparation on the basis of the rate of 32 cents per 100 pounds. We are not inclined, however, to enter any order that will require the defendant for the future to maintain a lower rate from Olar than from North; and inasmuch as the defendant now has in effect from North a lower net rate than that upon which reparation is here ordered, we shall make no order at all governing the rates from either point for the future.

An order will be entered in accordance with these findings.

18 I. C. C. Rep.

No. 3045.

ROYAL METAL MANUFACTURING COMPANY

v.

CHICAGO GREAT WESTERN RAILROAD COMPANY.

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*Submitted March 19, 1910. Decided April 11, 1910.*

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The evidence establishes that complainant was overcharged on two carload shipments of folding chairs from Chicago, Ill., to St. Joseph, Mo., for which defendant should make reparation without order.

*G. M. Stephen* for complainant.

*Winston, Payne, Strawn & Shaw* and *Blackburn Esterline* for defendant.

#### REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

September 30, 1908, complainant made a carload shipment of folding chairs from Chicago, Ill., to St. Joseph, Mo. The shipment weighed 12,600 pounds. Defendant collected a rate of 45 cents per 100 pounds, or the sum of \$56.70. October 5, 1908, complainant made a similar shipment from and to the same point on which the same rate was exacted. The weight of this shipment was 12,000 pounds.

Charges were collected on basis of the through third class rate then in effect in Western Classification. It is alleged in the complaint that these charges were unreasonable, because at that time in the same classification there was the following item:

Chairs, common, including common rocking chairs (complete chairs—cane, leather, or wood seat, not upholstered; but exclusive of chair frames, upholstered chairs, and rattan chairs), wooden stools (common), metal chairs and settees, minimum weight 12,000 pounds (subject to rule 6, item B); fourth class.

The fourth class rate from Chicago to St. Joseph is 32 cents per 100 pounds, and complainant seeks reparation for the difference between the third class and fourth class ratings.

At the hearing there was some dispute as to the exact character of the shipments, and an opportunity was afforded the parties to

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investigate and stipulate with respect thereto. There is now in the record a letter from the assistant general freight agent of the defendant in which it is stated that in his opinion the fourth class rate should have been applied on these shipments. This opinion is also concurred in by officials of the Western Railway Association and Inspection Bureau of Kansas City, Mo.

Upon examination of the record, we find that the chairs shipped are included in the description in the classification to which the fourth class rate applies.

It thus appears that this case resolves itself simply into one of error on the part of the carrier in applying the third class rating. The reparation claimed arises as the result of an overcharge which the defendant can and should refund without an order by the Commission.

18 I. C. C. Rep.

No. 3046.  
WILLIAM ROTSTED COMPANY  
v.  
CHICAGO & NORTH WESTERN RAILWAY COMPANY.

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*Submitted February 9, 1910. Decided April 11, 1910.*

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Reparation awarded for unreasonable charges on a mixed shipment of oats and flaxseed screenings in bulk.

*W. M. Hopkins* for complainant.  
*S. A. Lynde* for defendant.

REPORT OF THE COMMISSION.

*KNAPP, Chairman:*

July 23, 1907, complainant shipped over defendant's line from Chicago, Ill., to Milwaukee, Wis., a mixed carload of flaxseed screenings in bulk and oats in bulk. The oats and flax were separated in the car by a partition.

The flaxseed screenings weighed 40,650 pounds and the oats 20,950 pounds. To the latter there was applied a 30,000-pound minimum. On the flaxseed the defendant exacted a charge of 7 cents per 100 pounds and on the oats 3 cents per 100 pounds on a minimum of 30,000 pounds, or a total charge of \$37.46. It is alleged that these charges were unreasonable to the extent that the charge on the flaxseed screenings exceeded 3 cents per 100 pounds and the charge on the oats exceeded the actual weight. Reparation in the sum of \$18.98 is asked.

The claim was presented informally to the Commission October 10, 1908. At the time the shipment moved the tariffs of the defendant provided for the rates which were charged on these shipments. On November 15, 1909, defendant became party to a tariff which permits the application of the rate and weight alleged to be reasonable by complainant.

At the hearing defendant admitted that under the circumstances the charge exacted was unreasonable to the extent claimed and expressed a willingness to pay the reparation asked on order by the Commission.

Under all the circumstances of this case we are of opinion and find that the charges exacted by defendant on the shipment in question are unreasonable, and that complainant is entitled to reparation in the sum of \$18.98, with interest. The defendant will be required to maintain a rate on flaxseed screenings shipped in mixed carloads with oats in bulk between the points named that shall be no higher than is contemporaneously maintained on oats shipped under the same circumstances, and an order will be entered accordingly.

18 I. C. C. Rep.

No. 2204.  
DELRAY SALT COMPANY  
v.  
PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted December 8, 1909. Decided March 14, 1910.

Defendants' present rate on rock salt from Cuylerville, N. Y., to Detroit, Mich., found unreasonable and unjustly discriminatory, and reasonable rate prescribed for the future. Reparation awarded.

*Moore & Moore and Joseph P. Tracy* for complainant.

*Henry Wolf Bikle and George Stuart Patterson* for Pennsylvania Railroad Company.

*O. E. Butterfield* for Michigan Central Railroad Company.

REPORT OF THE COMMISSION.

**CLEMENTS, Commissioner:**

The complainant, a corporation, is engaged at Detroit, Mich., in producing, manufacturing, and distributing salt. It produces evaporated salt only, but for purposes of distribution requires coarse or rock salt, because there is demand from consumers for mixed carloads of evaporated and rock salt. Complainant draws its supply of rock salt from Cuylerville, N. Y., a point on the Pennsylvania Railroad about 394 miles distant from Detroit.

Unjust discrimination is alleged by complainant in that the rate of defendants for the transportation of rock salt in bulk, in carloads, from Cuylerville to Detroit is 11 cents per 100 pounds, whereas their rate from Cuylerville to Chicago, 285 miles beyond, and Hegewisch, Ill., and Hammond, Ind., is 10 cents. Shipments to these points move through Detroit. From April, 1906, to May 1, 1907, the rate on both evaporated and rock salt to Chicago and Detroit was 10 cents, but on that date the rate on evaporated salt to Chicago was raised to 14 cents and to Detroit 11 cents. On April 7, 1908, the rate on rock salt to Detroit was withdrawn and this brought about the present adjustment of 11 cents on rock salt to Detroit and 10 cents to Chicago.

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In the general arrangement of westbound rates to Central Freight Association territory Detroit is a 78-per-cent point with reference to the New York-Chicago rate, and complainant contends, inasmuch as the rates of 14 and 11 cents on evaporated salt to Chicago and Detroit, respectively, are made on this basis, that the rate on rock salt should not exceed 78 per cent of the present Chicago rate, or 7.8 cents. Reparation is asked on shipments charged for in excess of this rate.

The defense is that there is greater water competition at Chicago than at Detroit, and that greater market and carrier competition generally exists with respect to Chicago and neighboring points than to Detroit, because, on account of the numerous large meat-packing industries in and about Chicago, that territory has developed into the greatest salt consuming market in the United States.

We have heretofore had occasion to discuss the method of rate making between points in Central Freight Association territory with reference to the New York-Chicago rate and the circumstances and conditions which place Detroit in the 78-per-cent class.

Detroit takes 78 per cent of the Chicago rate on evaporated salt, and this record does not justify us in sanctioning a departure in this respect on shipments of rock salt. It is therefore our finding and conclusion that defendants' present rate of 11 cents on rock salt from Cuylerville to Detroit is unreasonable and unjustly discriminatory and should not exceed 78 per cent of the rate contemporaneously charged on the same commodity from Cuylerville to Chicago.

We further find that from June 30, 1907, to April 14, 1908, complainant shipped from Cuylerville to Detroit 885,000 pounds of rock salt in bulk, upon which a rate of 10 cents was paid, and 247,000 pounds between the last-mentioned date and April 9, 1909, on the 11-cent rate. Complainant is therefore entitled to reparation in the sum of \$273.74, which represents the excess on these shipments over the rate of 7.8 cents which we hold to be reasonable in view of the present Chicago rate.

An order will be entered in accordance with these findings and conclusions.

18 I. C. C. Rep.

No. 2977.

LOUIS ROSENBLATT AND MOSES ROSENBLATT, DOING  
BUSINESS UNDER THE FIRM NAME AND STYLE OF  
II. ROSENBLATT & SONS,

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.

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*Submitted March 28, 1910. Decided April 4, 1910.*

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1. Through rates exacted on shipments of cotton drills, cotton-duck cloth, and overalls and jackets, from Wheeling, W. Va., Cincinnati, Ohio, and Michigan City, Ind., to Beloit, Wis., exceeded the combinations on Chicago and are found unreasonable. Reparation awarded.
2. A shipment from Fort Wayne to Beloit, described in the complaint and shipping papers as cotton piece goods, consisted of "triplex cloth," which is composed of cotton cloth and cotton shoddy, held together with a composition of rubber; *Held*, That the cotton-piece-goods rate was not legally applicable thereon, and until the complainant pays the lawfully published rate, the Commission will express no conclusion as to the reasonableness of the rate or charges.

*G. M. Stephen* for complainant.

*S. A. Lynde* for Chicago & North Western Railway Company.

*William Ellis* for Chicago, Milwaukee & St. Paul Railway Company.

*O. E. Butterfield* for Michigan Central Railroad Company.

*C. B. Fernald* for Pittsburg, Cincinnati, Chicago & St. Louis Railway Company and Pennsylvania Company.

*G. W. Kretzinger* for Chicago, Indianapolis & Louisville Railway Company.

*M. R. Waite* for Cincinnati, Hamilton & Dayton Railway Company.

#### REPORT OF THE COMMISSION.

*HARLAN, Commissioner:*

The complainant manufactures and sells pants, shirts, overalls, and duck clothing at Beloit, in the state of Wisconsin, and alleges in its petition that, by reason of the fact that the joint through class rates from various points of origin exceed the combination class rates based on Chicago, it has been required to pay excessive charges for the transportation to Beloit of certain less-than-carload shipments of

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cotton piece goods, cotton drills, cotton-duck clothing, overalls, and jackets.

With respect to two less-than-carload shipments of cotton-duck cloth weighing in the aggregate 895 pounds that moved in March, 1909, from Cincinnati to Beloit the complaint is clearly well-founded. The charges collected at the through class rate of 60 cents per 100 pounds amounted to \$5.66. There was in effect at that time a local rate from Cincinnati to Chicago of 29 cents per 100 pounds, which, added to a rate of 15 cents beyond, made a combination through rate of 44 cents per 100 pounds. A joint through rate between those points has been established on that basis since the shipments moved. We therefore find that the complainant is entitled to reparation on those shipments in the sum of \$1.72, with interest.

Upon nine less-than-carload shipments of cotton overalls and jackets weighing in the aggregate 4,755 pounds and moving from Michigan City to Beloit during the period from May, 1908, to June, 1909, a joint through class rate of 67 cents per 100 pounds was applied and charges to the amount of \$31.95 were collected. It appears that this through rate was in excess of the combination rate based on Chicago, then in effect over the same route, and made up by adding the class rate of 36.66 cents per 100 pounds on cotton overalls and jackets from Chicago to Beloit and a local rate of 14½ cents per 100 pounds on the same articles from Michigan City to Chicago, making a total through combination charge of 51.16 cents per 100 pounds. While one of the defendants asserted on the hearing that there were traffic conditions justifying the maintenance of a through rate from Michigan City to Beloit that is higher than the combination on Chicago, no evidence was offered in support of that contention. The joint through rate must therefore fall before the presumption of unreasonableness that attaches to a through rate in excess of the sum of the local rates in effect over the same route. Moreover, since the date of the hearing, by a tariff effective February 15, 1910, the defendants have established a joint commodity rate of 51.16 cents per 100 pounds on cotton overalls and cotton jackets from Michigan City to Beloit. We therefore find that the joint through rate of 67 cents per 100 pounds was unreasonable to the extent that it exceeded the Chicago combination of 51.16 cents per 100 pounds; and that the complainant is therefore entitled to reparation on the nine shipments in question in the sum of \$7.63, with interest.

Upon 48 less-than-carload shipments of cotton drills, weighing in the aggregate 40,195 pounds, shipped to Beloit from Wheeling, in the state of West Virginia, during the period from May, 1908, to June, 1909, a joint through class rate of 63 cents per 100 pounds was applied and charges to the amount of \$252.79 were collected.

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This rate is attacked as unreasonable to the extent that it exceeded a through combination charge of 48 cents per 100 pounds based on Chicago, one factor of which is a local commodity rate of 15 cents per 100 pounds from Chicago to Beloit. This latter rate, however, while applicable on "cotton ducks, denims, and shirtings," did not specifically apply on cotton drills; and the defendants assert that on a shipment of cotton drills the only proper rate to apply from Chicago to Beloit was a class rate of 36.66 cents per 100 pounds. Using this as the proper factor from Chicago to Beloit to ascertain the through combination rate in effect at the time of the shipments on cotton drills, we find that the combination was 69.66 cents per 100 pounds, or more than the joint through rate actually collected by the defendants; but it appears that the defendants either were by no means certain that the 15-cent rate on "ducks, denims, and shirtings" ought not to apply also on cotton drills or recognized the right of cotton drills to move on an equivalent rate, for, in a joint tariff that became effective February 15, 1910, a joint through rate of 48 cents per 100 pounds was established, after full statutory notice, on cotton drills from Wheeling to Beloit, ostensibly to meet the combination on Chicago, the factors of which are expressly shown in the tariff as 33 and 15 cents. We accordingly find that the complainant is entitled to reparation in the sum of \$59.85, with interest, on the 48 shipments of cotton drills originating at Wheeling.

A joint through rate of 55 cents per 100 pounds was charged by the defendants, the Pennsylvania and the Chicago, Milwaukee & St. Paul, on one less-than-carload shipment billed as cotton piece goods from Fort Wayne to Beloit. This was the class rate applying on cotton piece goods. It develops, however, that the shipment actually consisted of "triplex cloth" or "triplex covert," a manufactured article composed of cotton cloth and cotton shoddy held together or "filled" with a composition of rubber. The Commission has received from the complainant and examined a sample of "triplex cloth" similar to that actually shipped. The fabric seems from no point of view to be "cotton piece goods" as that term is widely understood. In appearance, in weight, texture, and the use to which it is put it differs altogether from cotton piece goods. As a result of our own inquiries, made independently of the record, we have reached the conclusion that under the official classification "triplex cloth" must take the first class rate governing "dry goods n. o. s.;" and the first class rate from Fort Wayne to Beloit was and is 76 cents per 100 pounds. Upon inquiry by the Commission, counsel for the complainant admits that the cotton-piece-goods rate was not applicable on the movement. And the rate makers of the carriers seem to agree that "triplex cloth" is not cotton piece

goods. It therefore appears that the complainant has not paid the legal tariff rate upon this shipment. We do not find on the record sufficient ground for saying that the shipment was deliberately or intentionally misbilled. But we are unwilling to enter any order until advised that the complainant has paid the legal rate applying on the commodity shipped. In saying this much the Commission is not to be understood as holding that the first class rate is a reasonable rate on this fabric. On the contrary, we find a number of published tariffs, to some of which the defendants are parties, in which "triplex cloth" is made to take the same rates as cotton piece goods. But the question of the reasonableness of the rate legally applicable will be reserved for further consideration, either upon a supplemental petition filed by the complainant herein or upon an informal presentation of the question by the defendants, after the proper tariff rates have been paid by the complainant as required by law.

In our investigation of this general rate situation, we observe that the joint through class rates of the defendants from Cincinnati, Indianapolis, Logansport, South Bend, Akron, Pittsburg and numerous other points in the central states, to Beloit, exceed the combination of local class rates into and out of Chicago, and this misadjustment seems to prevail rather generally in that territory. These rates are not attacked in this proceeding. We deem it proper, however, here to mention the matter, with the suggestion that the through class rates of the defendants in this territory apparently stand in need of some revision.

An order will be entered in conformity with the conclusions herein reached. And the defendants will be required to maintain for the future through rates on the commodities and between the points named that shall not exceed the current combinations based on Chicago.

18 I. C. C. Rep.

No. 2952.

VULCAN STEAM SHOVEL COMPANY

v.

MISSOURI PACIFIC RAILWAY COMPANY ET AL.

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*Submitted March 21, 1910. Decided April 4, 1910.*

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The initial carrier herein ordered to establish for the transportation of the parts of a steam shovel necessary to make a complete article, when loaded in a car furnished by the carrier, accompanying a steam shovel hauled on its own wheels or on trucks furnished by shipper, on one bill of lading from one consignor to one consignee, a rate not higher than the rate on the steam shovel hauled on its own wheels.

*Sigmond Sanger* for complainant.

*C. C. P. Rausch* for Missouri Pacific Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

On April 5, 1909, complainant shipped a steam shovel from Coffeyville, Kans., to Toledo, Ohio, via the lines of the defendants. Two bills of lading were issued, one covering the steam shovel on its own trucks and the other the crane, dipper, and other parts. The shovel on its own trucks or wheels weighed 66,200 pounds, for which there was charged and collected \$218.46, at combination of class rates of 33 cents per 100 pounds. No complaint is made as to this rate and charge. The parts weighed 21,900 pounds, for which the carriers charged \$180, on minimum of 30,000 pounds, at rate of 60 cents per 100 pounds. The prayer is for a rating on steam-shovel parts not to exceed the rate on a steam shovel on its own wheels when it becomes necessary for safe transportation to detach said parts and load same in or on other cars, accompanying steam shovel through to destination, being shipped by one shipper to one consignee, covered by one bill of lading, and making one complete article, and asks reparation based on total weight of shovel and parts at the rate of 33 cents per 100 pounds.

Shipment moved under provisions of the Western and Official Classifications, the Western being applicable from Coffeyville to East  
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St. Louis, and the Official from the latter point to Toledo. Western Classification since April 1, 1906, has provided:

*Steam shovels and fixtures:*

Hauled in train or on trucks furnished by shipper, minimum weight 60,000 lbs., C. L., Class E.<sup>a</sup>

Loaded on flat car, minimum C. L. weight 30,000 lbs., C. L. Class A.

Parts of: K. D. in pieces L. C. L. 1; completely K. D. and boxed L. C. L. 2. C. L. Class A; Min. Wt. 30,000 lbs.

*Official Classification:*

Parts. Steam Shovels, when accompanying shipments of the article to which they belong, C. L. Class 6.

Shovels. Steam, on own wheels, actual weight of car, trucks, and contents to be charged for, minimum weight 30,000 lbs; man in charge must pay full fare, C. L. Class 6.

Steam. N. O. S., L. C. L. 2, C. L. 5.

Rule 5 (a) provides:

Unless otherwise provided in the Classification, the minimum weight upon all property in carloads, when loaded upon flat or in gondola, stock, or box cars, will be 30,000 lbs.

Class E and Class A rates from Coffeyville, Kans., to East St. Louis, Ill., were 18 and 45 cents per 100 pounds, respectively, and the sixth class rate from East St. Louis to Toledo 15 cents.

Rule 8 of the Western Classification, in part, provides:

When the minimum carload weight or more of one article is shipped in one day by one consignor to one consignee, covered by one bill of lading, the established rate for a carload shall apply on the entire lot, although it may be less than two or more full carload lots.

Rule 5 (c) of the Official Classification, as follows:

When a lot of freight in packages, pieces, or parts, shipped at one time by one consignor to one consignee and destination, whether loaded by consignor or carrier, makes a part carload in excess of full carload, or carloads, the carload minimum weight shall be charged for each full carload, unless actual weight be greater than the minimum weight, when actual weight shall be charged; and the part carload remaining over shall be charged at actual weight and carload rate, unless otherwise specified in the classification.

On basis of last rule the Wabash admits the shipment has been overcharged from East St. Louis to Toledo by the assessment of the minimum of 30,000 pounds instead of the actual weight.

The agent of complainant who made the shipment from Coffeyville was instructed to send it on one bill of lading, but was informed by the agent of defendant Missouri Pacific Railway that it would be necessary to make out two separate bills, which were accepted. Both bills were issued April 5, from the complainant at Coffeyville to itself at Toledo. The execution of two bills of lading for this ship-

<sup>a</sup>Class E rating will not apply on parts of steam shovels loaded on equipment furnished by the carriers.

ment was the act of the carrier's agent, for which neither the complainant nor his agent can be held responsible. The shipper who tenders a shipment which should move under one bill of lading may not be required to pay higher charges because he yields to the demand of carrier's agent that two bills of lading be executed.

Rule 5 of the Western Classification provides:

When parts or pieces constituting one or more complete articles are offered to carriers for transportation at one time by one shipper to one consignee and destination, they will be rated at the classification provided for the complete article whether set up or knocked down, as specified in the classification,

which is similar to Rule 22 of the Official Classification.

The Missouri Pacific, while admitting that the Western Classification does not prohibit acceptance of steam shovels completely set up and of parts attached ready for operation, avers that it does not impose the obligation of accepting any shipments that in the judgment of the carrier are not safe to transport. Its position is that the Class E is the lowest in the Western Classification, and that inasmuch as the carrier is compelled to furnish a car for the transportation of the parts there is no injustice in the assessment of a higher rate.

The Class-E rate under Western Classification is applicable to locomotives, extension pile drivers, log-loading machines, portable steel-rail saws, snowplows, steam wrecking cranes, derricks, etc., hauled in train or on trucks furnished by shippers, but the parts when shipped separately take a higher rate. Complainant admits that a separate shipment of steam-shovel parts not accompanying shovel should be classified higher than the steam shovel moving on its own wheels. The Southern Classification provides:

Shovels, Steam, on their own wheels (weight of car, truck, and contents to be charged for, less 20 per cent, the actual weight to be charged for on parts or attachments loaded on separate cars) (minimum weight, 20,000 lbs. for each car used). C. L. Class 6.

In view of all the facts and circumstances we are of opinion that it was unjust and unreasonable to exact a rate higher than Class E from Coffeyville, Kans., to East St. Louis, Ill., on the actual weight of the steam-shovel parts and that complainant is entitled to reparation in the sum of \$107.73, with interest. We are also of the opinion that defendant, the Missouri Pacific Railway Company, should establish on the parts of steam shovels necessary to make a complete article, when loaded in a car furnished by the carrier accompanying the steam shovel hauled on its own wheels or on trucks furnished by shipper when shipped on one bill of lading from one consignor to one consignee, a rate not higher than the rate on steam shovels hauled on their own wheels.

And it will be so ordered.

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No. 2487.  
DELRAY SALT COMPANY  
v.  
MICHIGAN CENTRAL RAILROAD COMPANY ET AL.

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*Submitted February 9, 1910. Decided April 11, 1910.*

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Rates on salt from Detroit, Mich., to Buffalo, N. Y., and New York City found unreasonable and lower rates for the future established.

*Moore & Moore* for complainant.

*Clyde Brown* and *O. E. Butterfield* for defendants.

REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

This case involves the rates on salt in carloads from Detroit, Mich., to Buffalo, N. Y., to New York City, and to other seaboard cities basing on the latter point. The original complaint related only to rates to the seaboard, but was broadened by amendment to cover the rates to Buffalo. The rates on salt from Detroit are 8 cents per 100 pounds to Buffalo, 17½ cents to New York City, and the usual arbitraries over or under that rate to the other seaboard cities.

Complainant, a corporation having its principal place of business in Detroit, is engaged in the production of salt in and near that city, and in its distribution to points in many of the States. Detroit salt competes with salt produced in other localities, and particularly in the East with Ohio and New York salt, as well as with the imported article. It is a cheap commodity, the selling price of bulk salt on the warehouse floor at Detroit being about \$1.50 per ton, or 7½ cents per 100 pounds, and in packages loaded in a railroad car about 10 cents per 100 pounds, or \$2 per ton.

Salt is produced in large quantities in many States, the principal of which, named in the order of their relative importance, are Michigan, New York, Ohio, Kansas, Louisiana, and California. Wide distribution and low prices at points of origin reduce competition in the markets largely to a matter of freight rates.

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The rates on salt within Official Classification territory are measured, as are rates on other articles, by percentages of the rates from Chicago to New York and by similar percentages of the rates from New York to Chicago, with occasional variations therefrom between certain points by means of specific commodity rates. The rate from Chicago to New York is 22½ cents, from New York to Chicago 20 cents. Detroit, taking 78 per cent of these basing rates, has a rate to New York of 17½ cents and a rate from New York of 16 cents. Salt hauled from New York to Detroit passes through the New York salt fields and meets local competition at Detroit. Salt hauled from Detroit to New York passes through the same New York fields and meets competition with foreign salt at destination. The terminal charges applied to the hauling in either direction are the same.

From June 1, 1903, to November 1, 1907, the rate from Detroit to Buffalo was 10 cents per 100 pounds. Between the latter date and March 1, 1909, salt in bulk took a rate of 5 cents and in packages of 6½ cents. On March 1, 1909, the rate was made 8 cents in packages or in bulk, and that rate is still in effect. The defendants insist that this rate is controlled by the rate from the Ohio salt fields to Buffalo. The tariffs on file show that a rate of 5 cents on bulk salt and 6 cents on salt in packages was in effect from Cleveland and Akron, Ohio, to Buffalo for ten months prior to the establishment by defendants of the 5 and 6½ cent rates from Detroit, and that the present rate of 7 cents from those points to Buffalo was established concurrently with defendants' rate of 8 cents. Buffalo being 251 miles east of Detroit, the former rate on bulk salt of 5 cents was nearly 4 mills per ton per mile and the rate of 6½ cents on salt in packages 5.31 mills, whereas the present rate of 8 cents yields 6.4 mills. Since January 15, 1906, defendants have maintained a rate from Syracuse to Buffalo of 4 cents per 100 pounds, which is equivalent to a ton-mile rate of 5.2 mills for a much shorter haul.

We find defendants' present rate on salt in carloads from Detroit to Buffalo is unreasonable, and that for the future a reasonable rate on salt between the points named should not exceed 6 cents per 100 pounds.

Since December 14, 1906, defendants have maintained a rate on salt from Detroit to Albany of 13 cents per 100 pounds. This rate has not induced any considerable movement, as the New York salt fields are much nearer to Albany and get a much lower rate. The Albany rate is equivalent to 4.71 mills per ton per mile, and complainant argues that because the Albany rate is ordinarily 96 per cent of the New York rate the rate to New York should not exceed 13½ cents. Complainant further contends that as the rate from Syracuse to Detroit has been 11 cents and from Syracuse to Chicago

14 cents since September 10, 1906, similar rates should apply from Detroit to the east.

We can not sustain this contention, which amounts to a demand for the readjustment of these rates solely on the basis of distance. However, in view of the 13-cent rate voluntarily established to Albany and the other facts and circumstances disclosed by the investigation, we are of the opinion that the present rate of  $17\frac{1}{2}$  cents is excessive, and that a just and reasonable rate for the future from Detroit to New York, and points taking New York rates, should not exceed 15 cents.

No demand for reparation is made. Substantial justice will be accomplished, in our judgment, by the establishment and maintenance of the rates above named, and an order will be entered accordingly.

18 I. C. C. Rep.

No. 2781.

UTICA TRAFFIC BUREAU

v.

NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY ET AL.

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*Submitted April 8, 1910. Decided May 2, 1910.*

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Complaint alleges undue discrimination and prejudice against complainant because of the withdrawal of certain assistance in unloading carload freight, formerly rendered by defendants under a rule which provided that such assistance would be rendered at the carrier's "convenience." On the record, and following, *Wholesale Fruit & Produce Asso., v. A., T. & S. F. Ry. Co.*, 17 I. C. C. Rep., 596, complaint dismissed.

*J. E. Hundley* for complainant.

*Clyde Brown* for New York Central & Hudson River Railroad Company and New York, Ontario & Western Railway Company.

#### REPORT OF THE COMMISSION.

*CLARK, Commissioner:*

This petition was brought by the above association of merchants on behalf of certain of its members, who are engaged in the wholesale purchase and sale of leather boots and shoes, flour in sacks and barrels, and automobiles.

Prior to January 1, 1909, Rule 8-B of Official Classification provided:

The owners will be required to load and unload freight in carloads, except that the carriers reserve the right to load and unload at their convenience.

Under this rule defendants furnished employees to tally and to assist in loading and unloading package freight in carloads. On January 1, 1909, the rule was amended by eliminating the words "except that the carriers reserve the right to load and unload at their convenience," and thereafter such assistance was not furnished. It is alleged that notwithstanding the provision of the amended rule tallying and assistance in loading and unloading carload package freight are furnished at New York City, Yonkers, Fulton, Buffalo, Troy, and

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Rochester, by reason of which fact defendants subject complainant's members to the payment of unjust and unreasonable charges, undue discrimination, prejudice, and disadvantage.

Defendant Delaware, Lackawanna & Western admits that while it does provide employees to tally packages in carloads it has declined to furnish assistance in loading or unloading. Inasmuch as it does not reach Yonkers, Rochester, or Troy, the complaint as to those points has no reference to it. It furnishes men to tally and assist in loading and unloading carload package freight at New York City, when received or delivered through its warehouses or sheds or over its platforms, or when delivered directly to or received directly from car barges or lighters in New York Harbor, and also at Buffalo and Fulton, N. Y., but avers that the physical and competitive conditions peculiar to those two points, as well as to New York City, are such as justify the exception to the rule of the classification.

The New York, Ontario & Western avers that the provisions of Rule 8-B previous to this amendment were intended to give the carriers a right to unload at such points and at such time as there might be congestion of traffic; that by exceptions to the classification the carriers have provided that tallying and assistance will be furnished at certain points where congestion is liable to occur, and that no necessity exists at Utica for such exception.

The New York Central admits that exceptions to the provisions and operation of Rule 8-B of the Official Classification are in force at New York City, Yonkers, Fulton, Buffalo, Troy, and Rochester, N. Y.

It is testified that the carriers in New York City load and unload package freight in carloads at certain New York City pier stations, to which the cars are brought on car floats and where it would be physically impossible for the shipper or consignees to load or unload the freight from the cars. As to Buffalo, it is contended that the furnishing of tallying and assistance by a large storage warehouse located there creates a competitive condition which has to be met by the carriers that have no lines to that warehouse, but that have stations near to it; that at Troy and Rochester the furnishing of tallymen and assistance is due to an order of the public service commission of the second district of New York, dated June 20, 1909, which, although applicable solely to intrastate traffic, was, in view of the fact that some of the carriers from Troy and Rochester pass outside the state of New York, made applicable to interstate traffic. At Yonkers the exception to the classification rule refers only to the loading of sugar.

The testimony shows that no carload shipments of leather boots and shoes are received at Utica. One company receives 4 or 5 car-

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loads of rubber goods per year. Another concern receives from 8 to 10 carloads of flour per year. The extent of the automobile dealer's business was not stated.

It appears that the practice of furnishing tallyman and assistance at Utica has not been uniform, and the exact date when it was stopped is not disclosed by the record. It would appear that the agent of the New York Central discontinued the practice in May, 1908.

The principal complaint of one of the witnesses was that the lack of tallyman resulted to his detriment in claims for loss or damage, inasmuch as thereby a railroad check was not had of the contents of the car and the condition of same. It was stated at the hearing that upon application a tallyman would be furnished to tally carload freight in packages received on New York Central rails. On the lines of the other defendants men are furnished to tally wool and to check damaged packages of other freight.

The question of the additional expense incurred by the change in the rule is admittedly problematical and conjectural, dependent upon what men are assigned to that work, the demand for their services elsewhere, and the value of their services. However, even when assistance to unload was furnished by the railroad, it was at the car itself and not at the warehouse or store of the receiver of the freight. The change in the rule necessarily increased somewhat the cost of carting.

It is seen that prior to May, 1908, tallymen and assistance in unloading carload freight were furnished at Utica, that gradually the service of checking has been lessened and assistance in unloading discontinued, and that since January 1, 1909, no assistance to unload has been furnished.

Late in 1907 the Commission directed the carriers' attention to the fact that the rule was open to criticism in that "at their convenience" was an extremely indefinite phrase, not binding the carriers to load and unload freight under certain specific circumstances or conditions; in that favoritism could be alleged thereunder by those for whom it was not "convenient" to load and unload carload freight, and that such favoritism might in fact be practiced under the rule. The Commission did not question the right of carriers to load or unload certain kinds of traffic or to load and unload commodities at certain places under a plain and definite rule. After considerable correspondence and investigation the rule was made positive.

In *Wholesale Fruit & Produce Association v. A., T. & S. F. Ry. Co.*, 14 I. C. C. Rep., 410, the Commission exhaustively reviewed the situation and the status of loading and unloading rules. The case had reference to loading and unloading fruit and vegetables, and the Com-

mission held that the defendants should continue to render certain assistance with carloads of fruits and vegetables in packages, and said:

It can not be stated as a matter of law that it is the absolute duty of carriers to unload carloads of package freight, nor that this duty rests upon the shipper. \* \* \* It is rather a question with respect to each commodity, of what, under the circumstances, is just and reasonable, and, perhaps, also, what has been the practice.

Subsequently, on petition of the same complainant and others, asking the Commission to extend its order to include all kinds of produce in packages at Chicago, and fruits and vegetables at St. Paul and Minneapolis, it was decided, 17 I. C. C. Rep., 596, that:

There is no good reason why ordinary package freight, which is loaded and unloaded upon the team track or at the private siding should not be handled into and out of the car by the shipper in the same manner that bulk freight is. The car is placed at the disposal of the shipper, who puts into it whatever he desires. \* \* \* At the point of delivery the car is received by the consignee and unloaded at his convenience.

The Commission declined to grant the relief prayed and held that the handlers of package freight at Chicago would be in no respect benefited if the handlers of fruits and vegetables were required to unload that traffic; and that the handlers of fruits and vegetables were not benefited by the fact that other produce in packages was not unloaded by the carriers.

In the present case it does not appear that Utica is subjected to unjust discrimination by defendants furnishing tallyman to check and assistance to load and unload carload package freight at the points above mentioned, nor is it shown that the members of complainant's association are unduly prejudiced thereby. It has been seen that competitive conditions obtain at these points which do not exist at Utica. Complainant's members are at some expense in unloading carload freight above that which they incurred previous to the change in the rule, but, taking into consideration the general custom and practice throughout the country, it does not appear that defendant's rule is unjust or unreasonable.

The complaint must be dismissed.

18 I. C. C. Rep.

No. 2870.  
SOUTHERN COTTON OIL COMPANY  
v.  
ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

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*Submitted March 5, 1910. Decided May 2, 1910.*

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Rate on cotton-seed hulls from Fayetteville, N. C., to Cartersville, Ga., found to be unreasonable, and reparation awarded. Maintenance of rate ordered.

*H. W. B. Glover* and *T. A. Bosley* for complainant.

*Ed. Baxter* and *R. Walton Moore* for defendant.

REPORT OF THE COMMISSION.

**CLARK, Commissioner:**

Complainant shipped 900 sacks, containing 45 tons, of cotton-seed hulls from Fayetteville, N. C., to Cartersville, Ga., January 18, 1908. Three bills of lading were issued, each for 300 sacks, and the rate inserted therein was \$3.30 per ton of 2,000 pounds. At the time of delivery and subsequent thereto freight charges were demanded and paid on these shipments at divers times aggregating \$342, at the rate of \$7.60 per ton, the through sixth class rate, which was legally applicable. Reparation is asked on the basis of \$2.50 per ton, and it is desired that that rate be prescribed for the future.

The above statement of the case is in conformity with the amended complaint. The original complaint was for two shipments of 300 sacks each between the same points, and reparation was asked on the basis of the subsequently established rate of \$3.40 per ton. In answer to the original complaint defendants admitted the facts alleged and that \$3.40 per ton would have been a reasonable charge; but answering the amended complaint they deny that a rate of \$2.50 per ton would be reasonable compensation to the carriers.

There had been and was in effect a combination of rates based on Atlanta of \$3.30 per ton, and in brief defendants admit that reparation on that basis would be fair.

After these shipments moved, a rate of \$2.50 per ton was established between Fayetteville and Cartersville via other lines, and it

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remained in effect until October, 1909. This was a blanket rate from North Carolina territory to Atlanta, Cartersville, Cedartown, and other points. Complainant avers that, as other lines voluntarily gave this lower rate from the group points of origin in North Carolina to Georgia points via a longer route than that taken by its shipments, any rate greater than \$2.50 on the shipments referred to in this case was unreasonable.

Rates on cotton-seed hulls from North Carolina points of origin have for many years been grouped, and for some years the rate was \$2.50 to Atlanta. Defendants contend that this rate was put in for the purpose of inducing a movement of hulls for use in feeding, at a time when hulls were regarded as of little value, and that it was found to be too low in comparison with other rates on hulls, and also with rates on other commodities. In 1909 the Atlanta rate was made \$3 and the Cartersville rate \$3.40.

Lower rates via another route are not necessarily reasonable rates via the route taken by shipments in a particular case. On the record we are not able to say that the present adjustment of rates is unreasonable to the extent contended for by complainant. The \$3.40 rate to Cartersville produces a higher per-ton-per-mile return for the longer haul to Cartersville than to Atlanta, and, under the circumstances, we find that the rate to Cartersville should not exceed \$3.20 per ton. This differential of 20 cents per ton to Cartersville over the Atlanta rate is also in line with the differential under the sixth class rate formerly applicable on this traffic.

Our conclusion is that the rate charged complainant on these shipments was unreasonable in so far as it exceeded a rate of \$3.20 per ton, and that for the future that rate should not be exceeded. Reparation will be awarded on that basis in the sum of \$198, with interest from November 15, 1909.

Such an order will be entered.

18 I. C. C. Rep.

No. 2729.

CONSUMERS' ICE COMPANY ET AL.

v.

ATCHISON, TOPEKA &amp; SANTA FE RAILWAY COMPANY.

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*Submitted February 9, 1910. Decided May 2, 1910.*

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Complaint seeks reparation on the ground that rate on slack coal was for a time higher to El Paso than to a nearby intermediate point, and higher than a subsequently established rate to El Paso. Neither discrimination resulting in damage to complainant nor unreasonableness *per se* in rate are found. Complaint dismissed.

*Rufus B. Daniel* for complainants.

*T. J. Norton, Robert Dunlap, and J. J. Coleman* for defendant.

#### REPORT OF THE COMMISSION.

**CLARK, Commissioner:**

Complainants ask for reparation on a number of carload shipments of slack coal, made over the lines of defendant from Gallup, N. Mex., to El Paso, Tex., between October 21, 1908, and June 24, 1909.

These claims for reparation rest upon two contentions:

(1) Undue discrimination in that at a time when the rate on slack coal in carloads from Gallup to El Paso was \$2.60 per ton, the rate on the same traffic to Courchesne, Tex., a point  $2\frac{1}{2}$  miles from El Paso and intermediate El Paso to Gallup, was \$2.15 per ton.

(2) That since the shipments in question moved, defendant has established a rate of \$2 per ton on slack coal from Gallup to El Paso and to points intermediate.

With respect to the first contention the evidence fails to show that any of the complainants were discriminated against or damaged by the existence of the \$2.15 rate to Courchesne while there was a \$2.60 rate to El Paso. Courchesne is a prepay station on the line of defendant, and the consumers of coal at that point did not receive any slack during the period involved. A cement plant was erected at Courchesne in 1908, but it was not in operation prior to June 24, 1909. About five carloads of engine coal were consumed there while the plant was being erected.

It is asserted by defendant that the maintenance of the \$2.15 rate to Courchesne while the \$2.60 rate was in effect to El Paso arose through a mistake in the tariff department, and that in fact it had no intention to apply the \$2.15 rate to Courchesne while a higher rate was maintained to El Paso.

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Turning now to consider the question of the reasonableness of the rates involved, we find the history of them to be as follows:

*Rates on coal from Gallup, N. Mex., per ton, carloads.*

Effective date.	To El Paso.		To Courchesne.	
	Lump.	Slack.	Lump.	Slack.
August 25, 1905.....	\$2.35	\$2.35		
May 10, 1907.....	2.45	2.00		
October 1, 1907.....	2.70	2.25		
February 1, 1908.....	2.60	2.15		
February 17, 1908.....	2.60	2.15	\$2.00	\$2.15
August 20, 1908.....	2.60	2.15	2.80	2.15
October 21, 1908.....	2.60	2.60	2.80	2.15
June 24, 1909.....	2.60	2.00	2.60	2.15
July 15, 1909.....	2.60	2.00	2.60	2.00

The distance from Gallup to El Paso is 387 miles, and the revenue derived from the \$2.60 rate is a little more than 7 mills per ton-mile, and from the \$2 rate it is 4.5 mills.

It will be observed that the rates on slack have fluctuated more than have the rates on lump coal. This arose from commercial conditions at El Paso. The Gallup mines produce considerable slack coal for which there is little demand. It was ascertained that by making low rates to El Paso the electric railway and gas company might be induced to use slack instead of oil. Experiments were made covering certain periods and rates were made in the hope that consumption of slack would be largely increased and a market be created for a product of the mine which would otherwise go to waste.

Within proper limitations carriers are justified in making low rates on traffic of this character, to induce movement which would not otherwise occur. Generally speaking, rates on lump and slack coal are the same in the territory here involved. The \$2.60 rate complained of is as low as, or lower than, the rates generally prevailing in the region, and is about the same, distance and conditions considered, as rates on coal prescribed by the Commission in *Southwestern Farmers League v. A., T. & S. F. Ry. Co.*, 12 I. C. C. Rep., 530; *Oklahoma v. A., T. & S. F. Ry. Co.*, 14 I. C. C. Rep., 517.

The fact that there is now in effect from Gallup to El Paso a rate of \$2 per ton on slack coal does not warrant a finding that the \$2.60 rate was unreasonable or otherwise unlawful. The rate to El Paso on lump coal is now \$2.60, and the fact that defendant has made a rate of \$2 on slack to open a field for the consumption of that commodity which would not otherwise be sold, does not justify a finding that the \$2.60 rate on lump coal or the previously existing rate on slack was unreasonable.

We find no basis upon which to award the reparation prayed for, and the complaint will be dismissed.

18 I. C. C. Rep.

No. 2591.  
J. I. LAMB COMPANY  
v.  
MICHIGAN CENTRAL RAILROAD COMPANY ET AL.

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*Submitted March 30, 1910. Decided May 2, 1910.*

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Reparation denied upon a shipment of grapes from South Haven, Mich., to La Crosse, Wis.

*J. I. Lamb* for complainant.

*William Ellis* and *F. G. Wright* for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

*CLARK, Commissioner:*

On September 19, 1908, complainant shipped a carload of grapes, weighing 24,000 pounds, from South Haven, Mich., to La Crosse, Wis., upon which defendants charged the sum of \$129.59, based upon a rate of 48 cents per 100 pounds and an icing charge of \$14.39. Complainant alleges that at the time there were rates in effect of 20 cents from South Haven to Chicago and 30 cents from Chicago to La Crosse, making a combination of 50 cents per 100 pounds, 2 cents higher than the rate charged, but that subsequently the factor from Chicago to La Crosse was reduced to 25 cents, making the combination 45 cents, and that on April 15, 1909, this combination of 45 cents was established as a joint rate. Complainant claims reparation in the amount of \$7.20 on the basis of a 45-cent rate. Defendant Chicago, Milwaukee & St. Paul Railway admits unreasonableness in the charges and offers to make refund, but defendant Michigan Central Railroad denies that the charges were unreasonable.

As the combination rate at the time of the movement was 2 cents higher than the through rate, the subsequent reduction of one of the factors, resulting in corresponding reduction in the through rate based upon the sum of the factors, was a mere voluntary reduction of a rate, and, as there is here nothing aside from this reduction to substantiate the alleged unreasonableness of the charges, the complaint must be dismissed. And it is so ordered.

18 I. C. C. Rep.

No. 3002.

IN THE MATTER OF THE SUBSTITUTION OF TONNAGE AT  
TRANSIT POINTS.

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*Submitted March 5, 1910. Decided May 3, 1910.*

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1. The various investigations held by the Commission in regard to the matter of the substitution of tonnage at transit points have failed to demonstrate that the Commission's Rule No. 76 of Tariff Circular 17-A, relative to substituting tonnage at transit point was too strict; but they have demonstrated that the various practices outlined in the report herein have resulted in the violation of published rates, to the injury of shippers not taking advantage of such practices. Continuance of such abuses will compel the Commission to resort to criminal prosecutions, including both shippers and carriers, to secure obedience to the law.
2. The Commission does not condemn the transit privileges as such, but holds that the responsibility for safeguarding and policing the transit privileges, to the end that the lawfully published rate shall be collected, rests entirely upon carriers; shippers, however, will not be excused in any case where they defeat published rates by any abuse of transit privileges. The duty of shippers to pay published rates is precisely the same as the duty of carriers to collect such rates.
3. It is the duty of shippers to submit to all necessary policing of their shipments if they desire to enjoy transit privileges, and they may also fairly be required to certify that shipments offered by them are entitled to go forward upon the transit rates.
4. If carriers will join in the cancellation of the arrangements which they have built up for the purpose of withholding business from each other they will be relatively as well off as they are now, while the elimination of these arrangements will decrease their expense of bookkeeping and supervision and will be for the benefit of all the industries affected.
5. If the carriers will yield somewhat in the matter of local rates to and from transit points, it will be possible to make such rates equal to the present published transit rates in many cases without serious loss of income to the carriers.

*John H. Marble* for the Commission.

*Henry M. Allen* for Millers' National Federation.

*Edward Andrews, J. C. Murray, C. B. Pierce, W. W. Hopkins, and F. M. Bunch* for Chicago Board of Trade.

*G. C. Bailey* for E. W. Bailey and Company.

*Charles Barham* for Nashville, Chattanooga & St. Louis Railway.

*Perkins Baxter* for lines in Southeastern Territory.

*L. V. Beatty* for Kansas City Southern Railway Company.

*John H. Bell* for Bell-Duff Commercial Company.

*G. P. Biles and T. C. Powell* for Cincinnati, New Orleans & Texas Pacific Railway Company.

*Harry H. Bingham* for Bingham Hewett Grain Company.

*Claude H. Birkett* for Birkett Mills.

*R. A. Brand* for Atlantic Coast Line Railroad Company.

*Alfred Brandeis* for Brandeis & Son.

*H. C. Burnett* for Lehigh Valley Railroad Company.

*R. L. Callahan* for Callahan & Sons.

*R. W. Chapin* for Buffalo Corn Exchange.

*Samuel Claggett* and *J. R. Ruffin* for Norfolk & Western Railway Company.

*R. N. Collyer* for Uniform Classification Committee.

*W. T. Cornelison* for Peoria Board of Trade.

*Charles M. Coz* for New England Millers' Committee.

*George H. Crosby* for Chicago, Burlington & Quincy Railroad Company.

*Milton L. Cushing* for J. Cushing & Company.

*John B. Daish* for American Hay Company.

*C. E. Dewey* for Central Vermont Railway Company.

*F. C. Dillard* and *J. A. Munroe* for Union Pacific Railroad Company and others.

*George D. Dixon*, *William Hodgdon*, and *Robert C. Wright* for Pennsylvania Railroad Company.

*M. F. Doyle* for Cleveland Grain Company.

*Edward D. Evans* for Evans Milling Company.

*George H. Evans* for Indianapolis Board of Trade.

*F. P. Eyman* and *S. A. Lynde* for Chicago & North Western Railway Company.

*B. M. Flippin*, *E. B. Boyd*, *J. C. Jeffery*, and *H. J. Campbell* for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

*Thomas Forman* for Thomas Forman Company.

*H. W. Forward* and *Henry Adams* for Erie Railroad Company.

*G. J. Gibbs* for Texas Grain Dealers' Association.

*Gus. Giesecke* for Guenther Milling Company.

*A. P. Gilbert* and *E. D. Hotchkiss* for Chesapeake & Ohio Railway Company.

*J. S. Gillies* and *D. D. Earing* for Gillies Brothers.

*A. L. Goetzmann* for Millers' National Federation and others.

*D. M. Goodwyn* and *A. R. Smith* for Louisville & Nashville Railroad Company.

*Lincoln Green*, *C. B. Northrop* and *T. C. Powell* for Southern Railway Company.

*E. R. Guenther* for Pioneer Flour Mills.

*C. Haile* for Missouri, Kansas & Texas Railway Company.

*E. J. Hana* for Northeastern Grain Dealers' Committee.

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- F. H. Hartwell* for H. Verhoeffler Company.  
*Joseph Hattendorf* and *D. W. Longstreet* for Illinois Central Railroad Company and others.  
*George S. Hobbs* for Maine Central Railroad Company.  
*F. B. Houghton* for Atchison, Topeka & Santa Fe Railway Company.  
*H. C. Hudgins* for Norfolk & Southern Railway Company.  
*A. J. Hunt* for Millers' National Federation.  
*D. O. Ives* and *E. V. Mitchell* for Boston Chamber of Commerce.  
*William S. Kallman*, *Francis La Bau*, *James Webster*, and *O. E. Butterfield* for New York Central Lines.  
*L. H. Kentfield* for New York, New Haven & Hartford Railroad Company.  
*J. C. La Coste* and *M. L. Bell* for Chicago, Rock Island & Pacific Railway Company and others.  
*J. C. Lincoln* for St. Louis Merchants' Exchange.  
*John W. Loud* and *George W. Kretzinger* for Grand Trunk Railway system.  
*C. C. McCain* for Trunk Line Association.  
*J. D. McLaurin* and *David N. Skillings* for Skillings, Whitneys & Barnes Lumber Company.  
*E. J. McVann* for Commercial Club of Omaha.  
*J. B. Magee* for Grain Shippers of Cairo.  
*J. R. Mills* for Kansas City Southern Railway Company.  
*L. F. Moore* for Wichita Transportation Bureau.  
*G. C. Mountcastle* for Fort Worth Freight Bureau.  
*W. J. Mullin* for Delaware & Hudson Company.  
*H. M. Newlin* for Pennsylvania Steel Company.  
*E. A. Niel* for Buffalo & Susquehanna Railway Company and others.  
*W. L. O'Dwyer* for New Orleans, Mobile & Chicago Railroad Company.  
*Gibson Oliver* for Oneonta Milling Company.  
*C. W. Owen* for Morgan's Louisiana & Texas Railroad & Steamship Company.  
*R. M. Parker* for American Sugar Refining Company.  
*W. A. Parker*, *C. S. Wight*, and *H. C. Smith* for Baltimore & Ohio Railroad Company.  
*H. M. Pearce* for Chicago, St. Paul, Minneapolis & Omaha Railway Company.  
*J. M. Perry* for Cutler Company.  
*H. E. Pierpont* and *William Ellis* for Chicago, Milwaukee & St. Paul Railway Company.  
*R. E. Pratt* for Buffalo Corn Exchange.  
*G. H. Purvis* for Atlanta & St. Andrews Bay Railway Company.

- P. P. Rainer* for Joint Rate Inspection Bureau.  
*E. S. Rea* for Rea-Patterson Milling Company.  
*Edgar J. Rich* for Boston & Maine Railroad.  
*Lincoln Richards* for Quaker Oats Company.  
*F. M. Rogers* for Medlin Milling Company.  
*J. L. Seager* and *A. B. Wallace* for Delaware, Lackawanna & Western Railroad Company.  
*F. O. Shane* and *G. C. Shane* for Shane Brothers Wilson Company.  
*Thomas G. Smiley* for Western Maryland Railway Company.  
*C. B. Stafford* for Memphis Grain & Hay Association.  
*E. S. Stephens* for Chicago & Eastern Illinois Railroad Company.  
*Sidney St. F. Thaxter* for Thaxter & Company.  
*Dean K. Webster* for H. K. Webster Company.  
*L. D. Wehle* for Shippers from Ohio River Gateways.  
*B. F. Wilkinson* for Wilkinson, Gaddis & Company.  
*H. G. Wilson* for Kansas City Board of Trade, and millers.  
*F. H. Wood* and *E. K. Voorhees* for St. Louis & San Francisco Railroad Company and others.  
*H. W. Woolf* for Southern Weighing & Inspection Bureau.  
*D. K. Hamilton* and *C. T. Ballard* for Ballard & Ballard Company.  
*Hawkins & Franklin* for El Paso & Southwestern system.  
*W. H. Mauss* for National Wool Warehouse & Storage Company.  
*Donald Rose* for Illinois Central Railroad Company, Yazoo & Mississippi Valley Railroad Company, and Indianapolis Southern Railroad Company.  
*Moses Rothschild* for Davenport Grain Exchange.  
*George A. Schroeder* for Milwaukee Chamber of Commerce.  
*W. P. Trickett* for Minneapolis Traffic Association.  
*A. G. Tyng* for Peoria Board of Trade.  
*A. H. Brenner* and *J. P. Daugherty* for Augusta Cotton Exchange and Board of Trade.  
*Charles L. Gay* for Farmers' Compress and Warehouse Company.  
*J. L. Hawley* for Gulf and Ship Island Railroad Company.  
*C. B. Howard* for Inman, Akers & Inman Southeastern Cotton Buyers' Association.  
*Edward Karow* and *John Nisbet* for Savannah Cotton Exchange.  
*Lastie E. Keiffer* for Moyse & Holmes.  
*James Menzies* for Atlantic Coast Line Railroad Company.  
*Thomas Nesbitt*, *W. C. Fenn*, and *S. B. Brown* for Georgia Cotton Company.  
*C. H. Pearson* and *E. T. Steele* for Alabama Great Southern Railroad Company.  
*T. B. Stackhouse* for Standard Warehouse Company.  
*Lawrence Weil* for Lehman Weil & Company.  
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*W. A. Winburn and Charles T. Airey* for Central of Georgia Railway Company.

*W. P. Bowles* for Wilson Ward Company.

*S. M. Bray* for Williams & Fitzhugh.

*F. M. Crump* for F. M. Crump & Company.

*James S. Davant* for Memphis Freight Bureau.

*Paul Dillard* for Dillard & Coffin Company.

*A. L. Foster* for J. W. Thompson Lumber Company.

*C. C. Hanson* for Gulf Compress Company.

*C. D. Jordan* for Southern Cotton Oil Company.

*R. O. McCormack* for Fort Worth Freight Bureau.

*Joel E. Wynne* for Wynne, Love & Company.

*W. F. Yates* for Yates, Donelson & Company.

*L. M. Wilson* for New York State and Pennsylvania grain dealers.

*Thomas H. Shepard* for Shepard & Morse Lumber Company.

*C. S. Belsterling, E. J. Booth, Otto Gresham, Frank Kell, Frank L. Sullivan, T. G. Williams, R. R. Shiel, N. H. Burt, James P. Ferrall, J. T. Jennings, S. F. Parrott, John S. Turner, John Wade, W. S. Darnell, W. E. Gage, H. J. Hasenwinkle, C. C. McChord, H. H. Maury, John Myers, J. P. Norfleet, G. E. Patterson, James E. Stark, and E. Taenzer.*

#### REPORT OF THE COMMISSION.

##### **COCKRELL, Commissioner:**

This inquiry was initiated by the Commission on its own motion in response to numerous complaints from shippers to the effect that competitors at transit points were by various substitutions evading payment of published rates. In response to these complaints on June 25, 1908, the Commission issued the following ruling:

A milling, storage, or cleaning-in-transit privilege is established on the theory that the commodity may be stopped en route for the enjoyment of such privilege, and the commodity or its product be forwarded under the application of the through rate from original point of shipment. It is not expected that the identity of each carload of grain, lumber, salt, etc., can or will be preserved, but in the opinion of the Commission it is unlawful to substitute at the transit point, or forward under the transit rate, tonnage or commodity that does not move into that point on that same rate.

Practically no attention was paid to this ruling by either shippers or carriers. The complaints grew in number, however, and the abuses increased rather than decreased in volume. Therefore, on June 29, 1909, the Commission adopted Rule No. 76 of Tariff Circular 17-A, as follows:

76. **SUBSTITUTING TONNAGE AT TRANSIT POINT** (adopted June 29, 1909).—A milling, storage, or cleaning-in-transit privilege can not be justified on any theory except that the identical commodity or its exact equivalent, or its product, is finally forwarded from the transit point under the application of the through rate from original point of shipment. It is, therefore, not permissible at transit point to forward on

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transit rate commodity that did not move into transit point on transit rate, or to substitute a commodity originating in one territory for the same or like commodity moving into transit point from another territory, or to make any substitution that would impair the integrity of the through rate. It is not practicable to require that the identity of each carload of grain, lumber, salt, etc., be preserved, but, in the opinion of the Commission, it is not possible to lawfully substitute at the transit point any commodity of a different kind from that which has moved into such transit point under a transit rate or rule. That is to say, oats or the products of oats may not be substituted for corn, corn or the products of corn for wheat, nor wheat or the products of wheat for barley, nor may shingles be substituted for lumber, or lumber for shingles, nor may rock salt be substituted for fine salt, nor fine salt for rock salt; likewise oak lumber may not be substituted for maple lumber, nor pine lumber for either oak or maple, nor may hard wheat, soft wheat, or spring wheat be substituted either for the other. These illustrations are given not as covering the entire field of possible abuses, but as indicating the view which the Commission will take of such abuses as they arise.

To the end that abuses now existing at transit points may be eliminated, carriers will be expected to conform their transit rules and their billing to the suggestions of this rule. In the event of the failure of any carrier so to do, reductions of legal rates caused by transit abuses will be regarded as voluntary concessions from legal rates.

Following this ruling numerous protests were received from shippers at transit points (particularly from millers at milling-in-transit points) to the effect that it was too strict and that its application would destroy all the benefits of transit privileges. The shippers making these protests petitioned the Commission to make an investigation into the matter of substitution of tonnage in transit, and asked that they be permitted to explain their practices and set forth their necessities. In response to these protests and requests the present inquiry was instituted.

Hearings in this matter have been held at Washington, D. C., Chicago, Ill.; Montgomery, Ala.; Memphis, Tenn.; and Boston, Mass. At these hearings all parties concerned have been invited to come forward and give the Commission all information in their possession. The hearings have been largely attended by both shippers and representatives of carriers, and the Commission is persuaded that the evidence given has been generally frank and full and that the record in this case fairly presents transit practices.

The testimony shows that substitution by which published rates are defeated is the rule at all transit points where that opportunity exists. The testimony has shown that published rates upon grain are defeated by substitutions at every grain market enjoying transit privileges, with the possible exception of the New England markets reshipping into New England territory. Grain shippers, however, are not the only delinquents. At Detroit it was found that through rates upon lumber are largely defeated by substitution. At Milwaukee rates upon salt are likewise defeated. At various points in the south rates upon cotton are defeated.

*Substitution of one commodity for another.*—The most apparent abuse shown by the inquiry is the substitution of one commodity for  
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another. At Chicago, for instance, it was found that oats had been forwarded as a continuation of the through transportation of shipments of barley. It is evident that any reduction of the rates obtained by such a practice is in violation of the act to regulate commerce. Similarly, instances of substitution of corn for oats, of wheat for barley, etc., have been found. In such cases the substitution is so evidently that of one commodity for another commodity that no difference of opinion as to the propriety of the practice can be said to exist.

The substitution of commodities which is most dangerous to the integrity of rates, however, is more insidious in form than the above. By investigating various shipments through Chicago, for instance, it was found that shipments of red winter wheat moving from Chicago to points in southeastern territory enjoyed transit privileges based upon shipments of hard winter wheat into Chicago from Kansas City, Mo. The testimony shows that no red winter wheat could be secured at the points in Kansas shown by the Kansas City billing as the origin of the shipments of hard winter wheat. It was also shown that a very large proportion of the red winter wheat reaching Chicago market comes from points south and southeast of the city of Chicago, not enjoying through rates to southeastern territory. It was evident, therefore (and this was admitted by a member of the very firm which made this substitution of soft wheat for hard wheat), that by the manipulation the rate of the railroad operating from Kansas City to Chicago had been defeated  $3\frac{1}{2}$  cents per 100 pounds, while the rate of the road operating from Chicago to the Ohio River had been defeated  $2\frac{1}{2}$  cents per 100 pounds, both reductions being from the rates published and legally applicable to the shipments actually made. Moreover, it appeared from the testimony that the completion of the substitution was made by sending forward the hard wheat from Kansas upon the railroad billing of the soft wheat arriving from Illinois, thus defeating the through rate from Chicago to the Atlantic coast on this wheat by one-half cent per 100 pounds. Here, therefore, is a reduction of  $6\frac{1}{2}$  cents per 100 pounds from the legal rates gained by device through the failure to show upon the railroad billing the fact that different kinds of wheat are really separate commodities, distinguished as markedly one from the other in the market as oats from corn or barley from wheat.

There is some uncertainty in the record as to the amount of the substitution practiced under the device last above described. There is absolutely no uncertainty, however, as to the possibility of such substitution and as to the fact that it has been made. The Commission has in its possession the billing and inspection records of no less than 30 carload shipments of wheat as to which this device was used, with the result of defeating published rates as above stated.

It also conclusively appears from the record that precisely the same manipulation is possible at Chicago upon shipments of corn as is above outlined for shipments of wheat. The market for yellow corn is largely in New England territory, while the market for white corn is largely in southeastern territory. Yellow corn is largely produced at points west of Chicago which enjoy joint rates to the southeast, but which do not enjoy joint rates to New England territory. A large part of the white corn reaching Chicago market is produced at points south and southeast of the city enjoying joint rates to New England territory and not to southeastern territory, the rate situation being identical with that applying to wheat above described. By substituting yellow for white corn, therefore, at Chicago the Chicago dealer is enabled to defeat rates several cents per 100 pounds.

At Detroit it was shown that the failure to distinguish in railroad billing between oak lumber and maple lumber was the occasion for a departure from the rates by means of substitution of  $3\frac{1}{2}$  cents per 100 pounds. In this case oak lumber shipped from Cincinnati to Detroit, and there milled while in transit to New England territory, is by the milling reduced in weight not less than 50 per cent. Therefore shippers using the transit privilege at Detroit send forward from that city the product of two cars of oak upon the transit privilege of one car of oak inbound, thus securing a surplus transit bill, which is used for forwarding an equal weight of maple lumber, brought to Detroit by rail or by boat from points northwest of that city. This maple lumber, according to the published tariffs, is due to pay a rate of not less than 15 cents per 100 pounds from Detroit to Boston. By sending it forward as the continuation of transit of oak lumber from Cincinnati this rate, however, is reduced to  $11\frac{1}{2}$  cents per 100 pounds. This last-described case, besides helping to show that railroad billing should be more precise in its description of the commodity carried than at present, also shows that the problem of loss in weight at transit points must be met by the tariffs. The latter point will be more fully considered below. Similarly, it was found that at Burlington, Vt., lumber was sent forward as the transit of shingles, with the full knowledge and consent of the railroad company concerned.

The Commission also found that railroad billing for salt at Milwaukee, where transit is enjoyed upon this commodity, frequently covers fine salt into Milwaukee and rock salt out, thus showing that rock salt is sent forward as a continuation of the transit of fine salt, to the defeat of the published rates, and to the injury of competing shippers not practicing this device.

Enough has been said to show that transit rules and regulations and railroad billings which do not distinguish between such different commodities as hard wheat and soft wheat or as yellow corn and

white corn or as oak lumber and maple lumber or as rock salt and fine salt leave wide open the opportunity for practices which defeat rates, violate the act, and injure honest shippers.

Although it is beyond the record, the Commission has reason to believe that at transit points on the Mississippi River substitution of timothy hay for prairie hay has taken place with the result of defeating published rates; also that substitution of white oats for red oats has taken place with a like result.

*Invisible loss at transit points.*—Many transit tariffs recognize the obvious fact that loss of weight at the milling point must be allowed for in the rules governing the privilege, or that local commodities will be substituted and sent forward without paying the correct local rate. For instance, transit tariffs governing the shelling of corn in transit at various western points provide that for each 100 pounds of ear corn inbound there may be sent forward as the continuation of the transportation 70 pounds of shelled corn and 30 pounds of cobs and husks. Also at the various points where milling in transit is given upon logs, it is provided that the weight inbound must be three or three and one-half times the weight outbound. Any excess of shipments outbound above this proportion must pay the local rate from the transit point. When properly adjusted to the actual conditions, such tariffs represent the obviously correct principle that transit can cover only the identical commodity or its product. In the case of the lumber shipments to and from Detroit above described it is evident that the transit of the oak lumber from Cincinnati should not cover more than the product of the oak actually received from Cincinnati. The failure of the tariffs in that case to so provide opens wide the door for the substitution of local tonnage to replace the loss of weight resulting from the milling process.

The Commission has before it tariffs governing the shelling of corn in transit at some western points, which provide that a tonnage of shelled corn equal to the weight of the ear corn received inbound may be forwarded at the balance of the through rate from the transit point. Such a tariff is a direct invitation to the shipper at the transit point to evade the rate by buying corn locally or from nontransit points and putting in the product of its shelling to replace the weight of the cobs in the shipment actually entitled to the transit. The testimony showed that at various transit points in the west shippers are allowed to kill and dress poultry in transit, sending forward a weight of dressed poultry equal to the weight of the live poultry received. The opportunity for abuse of the rates by shipping local poultry in place of the weight lost in dressing is evident.

Tariffs providing milling-in-transit privileges for the various grains are generally defective in this respect: In addition to failing to take account of the invisible loss in weight caused by drying, cleaning, and

milling, these tariffs allow outbound shipments of any one product to be forwarded at a weight equal to the entire weight of the grain received; that is to say, the shipment of a carload of flour may be based pound for pound upon the transit of a carload of wheat. It is evident that flour should not be forwarded as the transit of that portion of the grain which is made into bran, shorts, or other product other than flour. So far as this is allowed millers having a nontransit market for the shorts and bran produced from transit wheat, forward the flour product of nontransit wheat upon transit billing to the extent of the weight of the shorts and bran produced from transit wheat.

This necessity for making an allowance for the loss of weight of the commodity in transit during the process of milling or cleaning or drying or storage runs throughout the entire transit problem. The testimony shows, for instance, that barley will lose from 25 to 35 per cent of its weight in the process of malting, yet the malting-in-transit tariffs invariably provide that as many pounds of malt may be sent forward from the transit point at the balance of the through rate as there are pounds of barley received on the transit rate. The testimony from flour millers shows that the invisible loss in milling is comparatively small, amounting to from 1 to 2 per cent. The loss of weight in corn in the process of drying runs as high as 10 or 15 per cent, but will average 5 per cent. The loss of weight for lumber in the process of dressing, as shown above, is as much as 50 per cent.

In this connection, and to meet arguments that have been made at the hearings, the Commission desires to point out that some uncertainty exists as to whether the dealer at a transit point is to be placed upon an equality with his competitor at the point of origin of the raw material or with his competitor at the destination of the finished product. It is evident that the dealer at the intermediate point who has raw material drawn to him and sends the finished product through to destination secures from the carrier a different service from that which is given to the dealer who at the point of origin of the raw material manufactures the finished product and sends it through to destination. For example, dealers in lumber at Cincinnati may mill rough-oak lumber into flooring, reducing the weight by one-half in the process, and send the finished product from Cincinnati to New England territory at the lumber rate upon a single carload. The dealer at Detroit must have two cars of lumber drawn from Cincinnati to Detroit in order to get one car of the finished flooring to forward. The dealer at a New England point, the point of final consumption of this lumber, must have two cars of the rough lumber drawn the entire distance from the point of supply if he is to mill the same in competition with the dealers at Cincinnati or Detroit and must pay the lumber rate upon two cars to secure one carload

of the finished product. The contention of the millers at transit points is that they should be placed upon an equality with the millers at the source of supply of the raw material rather than with the millers at the destination of the product. We do not here attempt to decide which result should be reached, but it is evident that this result should be possible of attainment by open and honest practices, and that substitutions of local or nontransit commodities should not be permitted as a part of the plan.

The reference to the lumber situation at Detroit above is simply by way of illustration. The problem presented occurs with practically every commodity at practically every transit point.

*Local supply and local consumption.*—The testimony is general that shippers at transit points use when forwarding commodities the billing in hand which will give the best results; that is to say, they substitute in the way that will most reduce the published rates. One result of this practice is shown in the case of practically every flour miller appearing at the hearings. It was testified by these millers that the blending of wheat to secure a uniform grade of flour is an absolute necessity. At any typical milling point wheat is received from different territories under different rates. At most mills also a considerable quantity is received from nontransit sources, some from farmers' wagons, and some from near-by railroad points. All the wheat from the various sources must be blended to produce a single barrel of flour. No single carload of wheat is available for use until it has been tempered by wheat of a different quality from some other territory. The result is that the identity of the inbound shipment is absolutely lost in the process of milling. Any given lot of flour represents the average of all the wheat received rather than any single lot. Millers, however, without exception, use for outbound shipments the billing in hand which will give them the best results; that is to say, although the identity of the commodities is absolutely lost in the mill, the identity of the billing is absolutely preserved, and shipments of flour which are an average of all the shipments of wheat received go forward as coming entirely from that point which offers the lowest balance of a through rate to final destination. It also results from this practice that flour compounded of all the shipments received at the mill and delivered locally or to nontransit points is entirely charged against the local or nontransit supply, although it could not possibly be made from such supply. It is evident that if shipments out are average shipments corresponding billing should be canceled for the same. It is also evident that in so far as consignments of flour are delivered to the local market made from grain received from transit points, billing from such transit points should be canceled.

If, however, local supply and local disposition are kept separate from transit supply and product, or if billing is properly canceled

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for all local disposition, and if proper and frequent check is made of grain and product and billing on hand, and billing in excess of grain and product on hand is canceled, the oldest billing being selected for that purpose, it does not necessarily follow that unlawful substitution is accomplished by the blending of the grain for milling.

This branch of the problem is by no means confined to the millers. In the south it was found that cotton mills frequently use each year a supply of cotton equal to or greater than the entire nontransit supply coming to the markets at which they are located. These mills must have cotton of a uniform grade, and their supply is obtained only by selection or "classing" from the entire supply of cotton reaching the local market; that is to say, the mill uses a few bales out of every shipment coming to the market, whether from a non-transit or from a transit point. The local supply of cotton is merged in the transit supply in making shipments to transit points beyond the market, the dealer invariably using the billing which will give him the best results. Thus it occurs that the supply going to the mill is charged as entirely resulting from the nontransit supply of cotton reaching the market, although as a matter of fact it is well known to be an average of all the cotton reaching the market. It is obviously not proper to take out for nontransit disposition portions of transit shipments reaching a market unless at the same time corresponding transit billing is canceled.

*Mixed carloads.*—The practice of sending forward from transit points mixed carloads of various commodities as transit of solid carloads of such commodities is closely allied in nature with the above-described practice of flour millers. The mixed-carload practice finds its most important use with grain shippers of the New England territory. These shippers receive at their warehouses solid cars of the various grains for distribution to retail dealers in the smaller New England communities. It is obvious that such retail dealers can not carry in stock a full carload of each sort of grain or feed. The jobbers therefore make up carloads containing a representative assortment of various grains and grain products to go forward upon the transit rate. These mixed cars may contain half a dozen sorts of grain and a dozen sorts of flour and feed. The practice is to base the transit upon a solid car of one kind of grain. There is no indication in the record that through rates are defeated by this practice in New England, for the reason that there appears to be no non-transit supply of any one of the sorts of grain or feed handled in the above manner. All the commodities which are sent forward must, owing to the necessities of the case, have been received upon transit billing having precisely the same value for shipment beyond. In so far as there may be local supply of any of the commodities sent forward on this transit arrangement, it is evident that substitution



of such local supply is certain to take place in order to complete the deficiency in weight caused by local consumption.

If, therefore, there is no local supply at the transit point and billing is canceled for all tonnage disposed of locally, and the tonnage and the billing on hand are checked at reasonably frequent intervals and billing in excess of tonnage on hand is canceled, selecting for such cancellation the oldest billing, it would not seem that any unlawful feature is necessarily involved in this situation.

In other sections of the country than New England, however, and as applied to other commodities than grain and grain products, both in New England and elsewhere, it is certain that abuses of published rates occur in this mixed-car practice. As in the case of the millers blending wheat from different territory, some received on transit rates and some received on nontransit rates, it is evident that the shipments, either to transit or to nontransit points, represent an average of the various shipments received, and that corresponding billing should be canceled rather than that the entire mixed carload be charged against a solid carload from which it could not possibly have been produced.

*Mixed feed.*—The mixed-feed industry appears to be a growing one, especially at transit points. The maker of mixed feed mills together a number of grains and sometimes cotton-seed meal and molasses, producing what is practically a new commodity from various substances, some received upon transit rates and others secured either locally or upon nontransit rates. The present practice at many points is to forward cars of the mixture thus produced upon the transit of solid cars of grain. What has been said above regarding the blending of wheat by millers, and regarding the forwarding of mixed cars, and also regarding the substitution of the local supply for transit tonnage consumed locally, fully indicates the position of the Commission regarding this question of mixed feed. We are convinced that great abuses exist in shipments of this character, but they do not seem to be other than a combination of the abuses separately discussed above. Regarding this matter of the forwarding of mixed feed, it is proper to suggest that there must be a limit to the application of the transit practice, and this limit must be reached when there is such a process of manufacture and such a loss of identity of the inbound commodity that the shipment forwarded may be said to be a new creation. Some of the mixed feeds brought to our attention appear to be beyond the fair limits of a transit practice.

*Nontransit commodities added at transit points.*—Some tariffs provide that nontransit commodities (such as stone, grit, or molasses) may be added to transit commodities (such as grain or seeds), and a weight of the mixture equal to the weight of the inbound transit commodities forwarded as their product. This presents the difficulty

of a less-than-carload lot of the nontransit commodity going forward at a rate lower than the less-than-carload rate properly applicable, and even lower than the carload rate from the transit point proper. It is obvious that such a practice can not be allowed, and that such mixed feeds and like products must go forward from the transit points in amounts containing at least the carload minimum weights of transit commodities taking the transit rates, and with the proper local rate (either carload or less-than-carload as the weight may be) imposed upon the nontransit commodities in the mixture. This rule must be followed wherever the nontransit property added is sufficient in amount to form a really calculable portion of the mixture. A like rule must be applied to the still more obvious case presented by the dealer who desires to include a lot of nontransit grain or other commodity in a carload of transit property. If the transit portion of the shipment is to move upon the balance of a carload rate it must be of itself not less than the carload minimum in weight, and the nontransit tonnage in the car must be charged with the proper local rate.

*Concentration and classing of cotton.*—The concentration and classing of cotton at various points in the south does not present any problem different in principle from those presented by other commodities in other sections. Wherever there is a local supply and a nontransit disposition abuses are found, such abuses being greatest at seaports and at the points where mills have been established. It is believed that the general discussion of the practices relating to other commodities fully covers the abuses which are undoubtedly present at the cotton reshipping points in the south.

*Trading in expense bills.*—It is obvious that at the transit points where substitution is allowed expense bills will come to have an independent value separate from the commodities to which they refer. No effort was made to develop particular instances of purchase and sale of expense bills, but the record shows that such transactions take place at various points from time to time. The record also shows clearly that the price of commodities at transit points is frequently dependent upon the expense bill furnished by the seller, a somewhat higher price being paid if the expense bill is peculiarly valuable for outbound shipment. The additional price paid in consideration of expense bills of a certain character amounts obviously to a purchase of the bills.

At the Montgomery hearing, while it was not developed that expense bills for cotton are being sold at cotton-classing points, it was fully developed that such expense bills are frequently loaned by one shipper to another without the transfer of the commodity to which the bills relate. Thus a shipper having a carload of cotton to forward is able to get upon such cotton a lower rate by reason of

the favor of one of his neighbors than could be secured by reference simply to the tariff of the carrier. Such transactions are complete proof of unlawful substitutions.

At Memphis a peculiar situation exists. The rates for the transportation of cotton to that city are higher than net rates, a refund being given upon proof of shipment of a like weight of cotton via the line of the same carrier. Expense bills for inbound shipments are held by the cotton factors or commission merchants representing the growers. Expense bills for outbound shipments are held by the buyers representing the consumers. No refund can be secured without the presentation of expense bill for each movement. The result is that many expense bills are sold by the buyers to the factors for an amount equal to one-half of the refund to be gained. Some factors remit the refund to their principals in this country; some are able to remit only a portion through having to buy outbound expense bills. Other factors retain the refunds, leaving their principals to pay the gross rates to Memphis. The entire situation is unsatisfactory and should be cured by the installation of a system of flat rates.

*Surplus billing.*—It was shown by the hearing that dealers at transit points frequently have billing in hand without having an equivalent amount of the commodity represented by the billing. The practice in such cases is to retain the billing until a nontransit supply of the commodity can be secured, then to send such nontransit supply of the commodity forward upon the transit billing. That this is an abuse is generally recognized. The new rules for the government of grain transit on the Ohio River expressly provide that surplus billing shall be destroyed and that at no time shall any shipper have in hand transit billing which is not represented by transit commodity awaiting shipment. Obvious as this principle is, it is not generally recognized. No tariffs discovered by us recognize the obvious fact that unpaid expense bills covering grain in stock must be considered when the cancellation of surplus billing is undertaken. Certain milling-in-transit tariffs provide for the cancellation of surplus billing only once per year, and others make no provision for any cancellation at any time. This leaves wide open another opportunity for such substitution as has been above described. To be absolutely lawful the cancellation of the billing should be automatic; that is to say, when the commodity represented by the billing is disposed of, either locally or to a nontransit point or to a transit point, the inbound billing covering it should be canceled. Any other practice means that local commodities will be substituted and sent forward on the transit billing.

*Overdrafts upon transit accounts.*—The anomaly is presented of outbound shipments from transit points at balances of through rates before the receipt of the inbound shipments depended upon for the

transit privilege. At Milwaukee it developed that a number of grain shippers had enjoyed transit to the extent of some millions of pounds each beyond the amounts to which they would be entitled on the basis of shipments from transit points. The same feature has arisen with regard to shipments of dairy products at various points. Such situations show the recklessness with which both carriers and shippers have misused the transit arrangement and the urgent necessity for radical reforms.

*Collection of less-than-transit rates to transit points.*—In the north-western transit tariffs generally it is provided that upon receipt of grain at the transit point the through rate to the final destination shall be paid and that such destination shall be indicated. This at first glance seems not to afford opportunity for abuse. When it is remembered, however, that the rates from Minneapolis to various milling points between Minneapolis and Chicago are higher than the rates from Minneapolis to Chicago, it will be seen that the miller at the intermediate point, by paying the rate to Chicago and having the grain delivered to him locally, actually gets shipments to the transit point at less than the rate to such point. In one case where a large milling industry is concerned, the rate on oats from Minneapolis to the milling point is 15 cents per 100 pounds. The rate on oats from Minneapolis to Chicago via such milling point is  $7\frac{1}{2}$  cents per 100 pounds. This mill, under these tariffs, pays the rate to Chicago,  $7\frac{1}{2}$  cents per 100 pounds, and receives delivery of the oats at the milling point. It has a moral duty, of course, to send these oats forward and thus complete the transit. We can not find, however, that there is any enforcement of this duty. It mills the oats and has the right to send forward an equal tonnage. It may secure oats from a transit point enjoying a different rate and forward them, or forward oats from a nontransit point, or it may refrain altogether from completing the transit transaction. It is evident that such an adjustment is absurd. Upon delivery of the commodity at any point, no less than the rate to that point should be collected; otherwise the local rates to the point cease to have any practical significance.

*Transit as a railroad policy.*—One striking fact developed by this inquiry is that the transit privileges have been needlessly multiplied by the carriers. The interest which prompts this needless extension of the privilege is apparent. A carrier bringing raw material to a competitive transit point desires always to make certain that the product of such raw material shall go forward by its line. The most evident method of securing this result is to collect something more than the net rate for the transportation of the raw material to the transit point upon delivering such raw material to the industry, the excess collection to be credited upon the rate for the for-

warding of the finished product from such point. In such cases it is evident that the industry must pay a penalty if it uses any other means of transporting the finished product than the one provided by the carrier which transported the raw material. An analysis of the transit tariffs filed with us shows that the arrangement is in many cases not a privilege at all, but a burden upon the industries to which it applies. Such an arrangement frequently amounts to a requirement by the carrier that the industry shall in advance put up a bond that the finished product shall be forwarded by such carrier's line.

This competitive policy of the carriers, which results in many unnecessary transit arrangements, has also resulted in many pretended transit arrangements which can not be justified as such. We have before us, for instance, tariffs which provide for the forwarding of agricultural implements, vehicles, etc., as the transit of inbound shipments of logs. Unless all tariffs are to become "transit tariffs," such arrangements as those last mentioned must be condemned as unlawful. An agricultural implement is bound to be largely composed of other materials than wood, and may be entirely composed of such other materials. It is a manufactured product, having its first being at the factory where it is made. Its shipment from the factory is not in any proper sense a continuation of the shipment of the log from the forest to the mill.

*In conclusion.*—The hearing has failed to demonstrate that the Commission's ruling was too strict. It has demonstrated that various practices, as above outlined, have resulted in the violation of published rates, to the injury of shippers not taking advantage of such practices. Fraud can not be defined in this matter of abuse of transit any more than in any other line of activity. The Commission will not undertake to frame a code of transit rules. The traffic officials of the carriers have the duty and the responsibility under the law of initiating rates. They all agree in the statement that the system of rates devised by them is impracticable, and will result in great injury to carriers and business interests unless exceptions and privileges in the nature of transit are introduced. The Commission does not condemn the transit privileges as such, but it does hold that the responsibility for safeguarding and policing them, to the end that the lawfully published rates shall be collected, rests entirely upon the carriers. This is not saying that shippers will be excused in any case where they defeat published rates by any abuse of transit privileges. The duty of shippers to pay published rates is precisely the same as the duty of the carriers to collect such rates. Except in very rare instances, carriers give rebates or concessions only upon solicitation by shippers. In such case the liability of the carrier yielding to the

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solicitation is no greater or different than that of the shipper making it. The language of the law is:

It shall be unlawful for any person, persons, or corporation to offer, grant or give, or to solicit, accept or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said act to regulate commerce and the acts amendatory thereof, whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier as is required by said act to regulate commerce and the acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. Every person or corporation whether carrier or shipper who shall knowingly offer, grant or give or solicit, accept or receive any such rebates, concessions or discrimination shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than one thousand nor more than twenty thousand dollars.

It is the duty of shippers to submit to all necessary policing of their shipments if they desire to enjoy transit privileges. They may also fairly be required to certify that shipments offered by them are entitled to go forward upon the transit rates. Such certifications, however, do not excuse carriers from determining for themselves and at their peril that shipments carried at other than the regular local rates from the point of shipment are entitled to the exceptional or transit rates. Carriers will not be allowed to put in transit privileges either through competition with each other, or through the desire to hold local rates up to the highest possible point, without taking entire responsibility for the results of such privileges and the uses made of the same.

The Commission is convinced that if the carriers will join in the cancellation of the arrangements which they have built up for the purpose of withholding business from each other they will be relatively as well off as they are now, while the elimination of these arrangements will decrease their expense of bookkeeping and supervision and will be for the benefit of all the industries affected. The Commission is also convinced that if carriers will yield somewhat in the matter of local rates to and from transit points, it will be possible to make such rates equal to the present published transit rates in many cases without serious loss of income to the carriers and to their final profit. In every case where it is possible to replace transit privileges with flat rates it should be done.

At none of the large warehousing markets are the difficulties in the way of the adoption of a flat-rate system any greater than were those presented at Missouri River points some years ago when the Commission condemned the unlawful arrangement of rates on grain. As a result of the Commission's action the full local rates upon grain to these points are now paid regardless of the final disposition of such grain. Outbound shipments of grain from these points are carried at a flat rate regardless of the point of origin, providing the grain be

"from beyond." While still open to some legal objection, the system is far in advance of the system which it succeeded, and is so much in advance of the transit privileges generally throughout the country that it may well be accepted as a model by traffic managers desirous of remedying chaotic and unlawful practices upon their lines. The Commission is convinced that in no other way can transit rates to and from the large storage markets be arranged unless carriers are to take an impossible burden of policing and supervision and shippers be subjected to extremely annoying rules.

The Commission has been asked by numerous shippers, including the grain dealers along the Ohio River, the grain dealers in intermountain territory, and the lumber and shingle manufacturers of the Pacific coast, to condemn the transit privilege entirely as illegal. This the Commission is not prepared to do, the present order of the investigation affording no warrant for such action.

It is the law which has binding force upon both shippers and carriers in this matter, rather than rulings of the Commission, which simply represent the Commission's view of the law. The Commission's duty is to enforce the law, and this duty it is determined to perform. Rule No. 76 of the Commission, *supra*, may be taken, together with this opinion, as indicating the Commission's knowledge of the abuses shown by this investigation, and its demand upon both carriers and shippers that these and all similar abuses be prevented. If the abuses are prevented the law will be satisfied. If the abuses are not prevented the law will not be satisfied, no matter how ingeniously the machinery provided obscures the fact that the law is evaded.

We are convinced that shippers and carriers fully understand the Commission's position and their own practices. It is needless to say that the continuance of such abuses as are above outlined will compel the Commission to resort to criminal prosecution, to include both shippers and carriers, to secure obedience to the law rather than to any further or other form of moral suasion.

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No. 3031.  
OHIO IRON & METAL COMPANY  
v.  
WABASH RAILROAD COMPANY ET AL.

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*Submitted February 9, 1910. Decided May 3, 1910.*

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An erroneous statement of defendants' agent resulting in the shipment moving over the lines of defendants at a rate higher than that in force via another route does not entitle the complainant to an award of reparation. Complaint dismissed.

*Samuel J. Posen* for complainant.

No appearances for defendants.

REPORT OF THE COMMISSION.

**COCKRELL, Commissioner:**

On November 13, 1907, complainant shipped over the lines of the defendants from St. Louis, Mo., to Canton, Ill., one carload of scrap iron, weight 75,120 pounds, on which charges were collected on basis of rate of 9.15 cents per 100 pounds. Complainant alleges that such rate was unreasonable to the extent that it exceeded rate of \$1.10 per gross ton in effect on the same traffic between the same points over the line of the Chicago, Burlington & Quincy Railroad, and reparation on basis thereof is asked. The complaint was filed informally on November 1, 1909.

Effective May 2, 1906, scrap iron, carload, from St. Louis to Canton, Ill., over the lines of defendants, was rated ninth class, or 9.15 cents per 100 pounds, under the Illinois classification. This rate continued in effect until June 15, 1909, when it was reduced to 8.6 cents. At the time the shipment moved a rate of \$1.10 per gross ton between the points named was applicable via the Chicago, Burlington & Quincy Railroad, and the rate now in force over that line is \$1.25 per gross ton.

The record shows that the agent of the defendant, the Wabash Railroad, solicited the shipment, stating that the rate over the lines of the defendants was the same as the rate via competing lines. Accordingly the complainant delivered the shipment to the Wabash

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road. Complainant did not present any evidence of the unreasonableness of the rate charged other than a showing that a lower rate was in effect over another route. It is well settled that such a showing is not of itself sufficient to establish the unreasonableness of a given rate. The representation by the agent of the Wabash road that the rate over the lines of defendants was the same as via competing lines does not warrant any charge less than the lawful tariff rate applicable via route of movement. Shippers are presumed to know the rates and have access to tariffs, which are required to be filed in all railroad offices. The fact that the erroneous statement of defendants' agent resulted in the shipment moving over the lines of defendants at a rate higher than that in force via another route does not entitle the complainant to an award of reparation. The act to regulate commerce does not confer upon this Commission authority to award damages because of such an error.

There being in this case no basis upon which an award of reparation can be predicated, the complaint will be dismissed.

18 I. C. C. Rep.

No. 2401.

H. B. MARIS

v.

SOUTHERN PACIFIC COMPANY ET AL. AND 7 OTHER CASES  
DISPOSED OF IN THE ORDER ENTERED HEREIN,  
WHEREIN THE PARTIES ARE NAMED, WHICH CASES  
ARE INDICATED BY DOCKET NUMBERS AS FOLLOWS:  
2380, 2452, 2640, 2641, 2642, 2643, AND 2692.

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*Submitted April 16, 1910. Decided May 2, 1910.*

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Defendants' prior rate of 85 cents per 100 pounds for the transportation of hard-wood lumber in carloads from various points along and west of the Mississippi River to San Francisco, Cal., and other Pacific terminals, found unreasonable; their present rate of 75 cents per 100 pounds for such transportation held reasonable. Reparation awarded in certain cases.

*Lester G. Burnett and J. O. Bracken* for complainants.

*T. J. Norton and E. W. Camp* for Atchison, Topeka & Santa Fe Railway Company.

*E. B. Peirce and E. W. Camp* for St. Louis, Iron Mountain & Southern Railway Company; St. Louis, Kansas & Colorado Railway Company; Chicago & Eastern Illinois Railroad Company; Chicago, Rock Island & Pacific Railway Company; Chicago, Rock Island & Gulf Railway Company; and Chicago, Rock Island & El Paso Railway Company.

*F. C. Dillard and C. W. Durbrow* for Southern Pacific Company; Union Pacific Railroad Company; Galveston, Harrisburg & San Antonio Railway Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Texas & New Orleans Railroad Company; Missouri & North Arkansas Railroad Company; Missouri Pacific Railway Company; Denver & Rio Grande Railroad Company; Colorado Midland Railway Company; and El Paso & Southwestern Railroad Company.

#### REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

These complaints involve the reasonableness of the charge of 85 cents per 100 pounds collected by defendants for the transportation of carload shipments of hard-wood lumber from points on and west

of the Mississippi River to San Francisco, Cal., and other Pacific terminals. Reparation is asked. Each complaint has relation to one or more carload shipments of hard-wood lumber and contains an allegation that the rate charged and collected was unreasonable to the extent that it exceeded 75 cents.

Although the shipments covered by the various complaints moved over different routes, the question involved is the same in each, and they will be disposed of in this report.

The complaints herein are of the same character as those considered by the Commission in the case of *Kindelon v. Southern Pacific Co.*, 17 I. C. C. Rep., 251. The defendants have stipulated that the shipments moved under the same circumstances and conditions as those in the *Kindelon case* and that these cases may be submitted, heard, and determined upon the record made in that case, the taking of testimony, filing of briefs, and making of oral argument being expressly waived.

For reasons given in the *Kindelon case* we find that the charge of 85 cents collected by defendants for the transportation of hard-wood lumber in carloads from points on and west of the Mississippi River to Pacific terminals was unreasonable to the extent that it exceeded 75 cents and that complainants are entitled to awards of reparation.

In each of the cases here involved our findings and conclusions are further stated as follows:

In case No. 2401, *H. B. Maris v. Southern Pacific Company, Galveston, Harrisburg & San Antonio Railway Company, Texas & Pacific Railway Company, and St. Louis Southwestern Railway Company*, complainant on May 28, 1908, shipped from Pool, Ark., to San Francisco, Cal., a carload of hard-wood lumber. The weight of the shipment was 42,200 pounds and the charges at 85 cents per 100 pounds amounted to \$358.70. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents and that complainant is entitled to reparation from these defendants in the sum of \$42.20, with interest from July 1, 1908.

In case No. 2380, *Allen & Higgins Lumber Company v. Atchison, Topeka & Santa Fe Railway Company, Chicago, Rock Island & Pacific Railway Company, St. Louis & San Francisco Railroad Company, and Wilson Northern Railway Company*, complainant on October 7, 1907, shipped from Marie, Ark., to San Francisco, Cal., a carload of hard-wood lumber. The shipment weighed 58,400 pounds and the charges at 85 cents per 100 pounds amounted to \$496.40. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents and that complainant is entitled to reparation from these defendants in the sum of \$58.40, with interest from January 1, 1908.

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In case No. 2452, Edward F. Niehaus & Company v. Southern Pacific Company, Galveston, Harrisburg & San Antonio Railway Company, Texas & New Orleans Railroad Company, and Morgan's Louisiana & Texas Railroad & Steamship Company, complainant on September 24, 1907, shipped from Washington, La., to San Francisco, Cal., a carload of hard-wood lumber. The weight of the shipment was 52,100 pounds and the charges at 85 cents per 100 pounds amounted to \$442.85. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents and complainant is entitled to reparation from these defendants in the sum of \$52.10, with interest from October 16, 1907. In this complaint there was a shipment which moved June 12, 1907, prior to the filing of the complaint in the case of *Burgess v. Transcontinental Freight Bureau*, 13 I. C. C. Rep., 668, and for reasons given in the *Kindelon case, supra*, reparation on this shipment will not be allowed.

In case No. 2640, E. A. Howard & Company v. Texas & Pacific Railway Company, St. Louis, Iron Mountain & Southern Railway Company, and Southern Pacific Company, complainant on October 7, 1907, and November 11, 1907, respectively, shipped a carload of hard-wood lumber from Winston, La., to San Francisco, Cal. September 23, 1907, complainant shipped from Collinston, La., to San Francisco, Cal., a carload of hard-wood lumber. The shipments weighed in the aggregate 137,500 pounds and the charges at 85 cents per 100 pounds amounted to \$1,168.75. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents and complainant is entitled to reparation from these defendants in the sum of \$137.50, with interest from January 1, 1908.

In case No. 2641, E. A. Howard & Company v. Mississippi, Arkansas & Western Railway Company, Southern Pacific Company, Union Pacific Railroad Company, Missouri Pacific Railway Company, and St. Louis, Iron Mountain & Southern Railway Company, complainant in December, 1907, shipped from Shults, Ark., to San Francisco, Cal., a carload of hard-wood lumber. The shipment weighed 42,400 pounds and the charges at 85 cents per 100 pounds amounted to \$360.40. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents and complainant is entitled to reparation from these defendants in the sum of \$42.40, with interest from January 16, 1908. Complainant made a shipment from Shults, Ark., to San Francisco, Cal., on April 20, 1907. This shipment moved prior to the date of the filing of the complaint in the *Burgess case, supra*, and for reasons given in the *Kindelon case, supra*, no award of reparation will be made therefor.

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In case No. 2642, *E. A. Howard & Company v. St. Louis Southwestern Railway Company of Texas, St. Louis Southwestern Railway Company, Texas & Pacific Railway Company, and Southern Pacific Company*, complainant in April, 1908, shipped from Naples, Tex., to San Francisco, Cal., a carload of hard-wood lumber. The shipment weighed 51,400 pounds, and the charges at 85 cents per 100 pounds amounted to \$436.90. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents, and complainant is entitled to reparation from these defendants in the sum of \$51.40, with interest from May 21, 1908.

In case No. 2643, *E. A. Howard & Company v. St. Louis & San Francisco Railroad Company, Union Pacific Railroad Company, and Southern Pacific Company*, complainant shipped five carloads of oak lumber from points in Arkansas to San Francisco, Cal., on the following dates, showing weight, charges collected, and amount of reparation claimed:

Date.	From—	Weight.	Charges.	Reparation.
		Pounds.		
October 25, 1907.....	Marked Tree.....	47,920	\$407.32	\$47.92
November 20, 1907.....	Gilmore.....	45,200	384.20	45.20
November 6, 1907.....	do.....	40,000	340.00	40.00
October 1, 1907.....	Marked Tree.....	40,000	340.00	40.00
September 13, 1907.....	do.....	47,000	399.50	47.00

The aggregate weight of the shipments was 220,120 pounds. The charges at 85 cents per 100 pounds amounted to \$1,871.02. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents and that complainant is entitled to reparation from these defendants in the sum of \$220.12, with interest from January 1, 1908.

In case No. 2692, *E. A. Howard & Company v. Chicago, Rock Island & Pacific Railway Company, Union Pacific Railroad Company, and Southern Pacific Company*, complainant shipped from Quigley, Ark., to San Francisco, Cal., a carload of hard-wood lumber. The shipment weighed 47,500 pounds, and the charges at 85 cents per 100 pounds amounted to \$404.94. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents and that complainant is entitled to reparation from these defendants in the sum of \$47.50, with interest from September 25, 1907. In this complaint there are three other carload shipments, but as each of them moved prior to June 28, 1907, the date of the filing of the complaint in the *Burgess case, supra*, and for reasons given in the *Kindelon case, supra*, reparation will not be awarded on these shipments.

In Sub-No. 2 to No. 2692, *E. A. Howard & Company v. Chicago, Rock Island & Pacific Railway Company, Chicago, Rock Island & Gulf Railway Company, Chicago, Rock Island & El Paso Railway Company, El Paso & Northeastern Railway Company, El Paso & Northeastern Railroad Company, El Paso & Rock Island Railway Company, Galveston, Harrisburg & San Antonio Railway Company, El Paso & Southwestern Railroad Company, and Southern Pacific Company*, complainant in October, 1907, shipped from Quigley, Ark., to San Francisco, Cal., a carload of hard-wood lumber. The shipment weighed 59,200 pounds, and the charges at 85 cents per 100 pounds amounted to \$503.20. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents and that complainant is entitled to reparation from these defendants in the sum of \$59.20, with interest from December 16 1907. In this complaint there is another carload shipment which moved prior to June 28, 1907. For reasons above given reparation will not be allowed on this shipment.

In Sub-No. 3 to No. 2692, *E. A. Howard & Company v. Chicago, Rock Island & Pacific Railway Company, Chicago, Rock Island & Gulf Railway Company, Chicago, Rock Island & El Paso Railway Company, El Paso & Northeastern Railway Company, El Paso & Northeastern Railroad Company, El Paso & Rock Island Railway Company, Galveston, Harrisburg & San Antonio Railway Company, El Paso & Southwestern Railroad Company, and Southern Pacific Company*, complainant on August 1, 1907, shipped from Quigley, Ark., to San Francisco, Cal., a carload of hard-wood lumber. The shipment weighed 40,000 pounds, and the charges at 85 cents per 100 pounds amounted to \$340. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents and that complainant is entitled to reparation from these defendants in the sum of \$40, with interest from August 10, 1907.

In Sub-No. 4 to No. 2692, *E. A. Howard & Company v. Brinkley, Helena & Indian Bay Railroad Company, Arkansas Midland Railroad Company, St. Louis, Iron Mountain & Southern Railway Company, Missouri Pacific Railway Company, Denver & Rio Grande Railroad Company, Rio Grande Western Railway Company, and Southern Pacific Company*, complainant on February 28, 1908, shipped from Marvell, Ark., to San Francisco, Cal., a carload of hard-wood lumber. The shipment weighed 46,400 pounds and the charges at 85 cents per 100 pounds amounted to \$394.40. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents and that complainant is entitled to reparation in the sum of \$46.40, with interest from April 1, 1908.

In Sub-No. 5 to No. 2692, *E. A. Howard & Company v. St. Louis & San Francisco Railroad Company, Chicago, Rock Island & Pacific Railway Company, Chicago, Rock Island & Gulf Railway Company, Chicago, Rock Island & El Paso Railway Company, El Paso & South-western Railroad Company, Southern Pacific Company, El Paso & Northeastern Railroad Company, El Paso & Northeastern Railway Company, El Paso & Rock Island Railway Company, and Galveston, Harrisburg & San Antonio Railway Company*, complainant on November 9, 1907, shipped from Marked Tree, Ark., to San Francisco, Cal., a carload of hard-wood lumber. The shipment weighed 50,000 pounds and the charges at 85 cents per 100 pounds amounted to \$425. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents and that complainant is entitled to reparation from these defendants in the sum of \$50, with interest from December 24, 1907.

In Sub-No. 6 to No. 2692, *E. A. Howard & Company v. Galveston, Harrisburg & San Antonio Railway Company, Texas & New Orleans Railroad Company, Morgan's Louisiana & Texas Railroad & Steamship Company, and Southern Pacific Company*, complainant on October 8, 1907, shipped from Greer, La., to San Francisco, Cal., a carload of hard-wood lumber. The shipment weighed 44,600 pounds and the charges at 85 cents per 100 pounds amounted to \$379.10. We are of opinion and find that the charge of 85 cents per 100 pounds was unreasonable to the extent that it exceeded 75 cents and that complainant is entitled to reparation in the sum of \$44.60, with interest from April 29, 1908.

In Sub-No. 7 to No. 2692, *E. A. Howard & Company v. Galveston, Harrisburg & San Antonio Railway Company, Texas & New Orleans Railroad Company, Morgan's Louisiana & Texas Railroad & Steamship Company, Yazoo & Mississippi Valley Railroad Company, and Southern Pacific Company*, complainant on October 16, 1907, shipped from a point east of the Mississippi River to San Francisco, Cal., a carload of hard-wood lumber; on October 21, 1907, complainant shipped from a point east of the Mississippi River to San Francisco, Cal., a carload of hard-wood lumber. In this case the initial point does not appear in the record but the complaint shows that the shipments were waybilled from Memphis, Tenn., which indicates that they originated at some point on the Yazoo & Mississippi Valley beyond Memphis. For reasons given in the case of *White Bros. v. A., T. & S. F. Ry. Co.*, 17 I. C. C. Rep., 288, reparation on these shipments will not be awarded. The through rate from the point of origin to San Francisco was not considered in the *Burgess case, supra*, and we are not able to determine that the through charge of 85 cents per 100

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pounds from a point east of the Mississippi River to San Francisco is unreasonable. This complaint will therefore be dismissed.

In Sub-No. 8 to No. 2692, *E. A. Howard & Company v. Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Wabash Railroad Company, Union Pacific Railroad Company, and Southern Pacific Company*, complainant in November, 1907, shipped from Glidden, Wis., to San Francisco, Cal., a carload of hard-wood lumber. This shipment originated at a point east of the Mississippi River and the through rate of 85 cents per 100 pounds from Glidden to San Francisco was applied. For reasons given in the case of *White Bros. v. A., T. & S. F. Ry. Co.*, *supra*, reparation will not be awarded on this shipment. The through rate from the initial point east of the Mississippi River to San Francisco was not considered in the *Burgess case*, *supra*, and we are unable to find that the through rate of 85 cents per 100 pounds from Glidden to San Francisco is unreasonable. This complaint will therefore be dismissed.

Orders will be entered in accordance with the foregoing findings.

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No. 2377.

WHITE BROTHERS

v.

SOUTHERN PACIFIC COMPANY ET AL.

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No. 2417.

SAME

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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No. 2639.

E. A. HOWARD & COMPANY

v.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY  
ET AL.

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No. 2638.

SAME

v.

WISCONSIN CENTRAL RAILWAY COMPANY ET AL.

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No. 2637.

SAME

v.

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY  
COMPANY ET AL.

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*Submitted May 11, 1909. Decided May 2, 1910.*

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As there is not sufficient evidence of record in these cases to warrant finding that the through rates charged were unreasonable, reparation is denied.

*Lester G. Burnett, J. O. Bracken, and Cushing & Cushing for complainants.*

*T. J. Norton and E. W. Camp for Atchison, Topeka & Santa Fe Railway Company.*

*F. C. Dillard and C. W. Durbrow for Southern Pacific Lines.*

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## REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

It is alleged in these complaints that the charge by defendants of the published through rate of 85 cents per 100 pounds for the transportation of hard-wood lumber in carloads from points east of the Mississippi River to San Francisco, Cal., was unreasonable for the reason that at the same time there was a combination of local rates between the same points that made less than 85 cents. Reparation is asked.

These cases raise the same question considered by the Commission in *White Brothers v. A., T. & S. F. Ry. Co.*, 17 I. C. C. Rep., 288, wherein it was held that there was not sufficient evidence in the record in those cases to warrant findings that the through rates charged were unreasonable.

No additional evidence is submitted in these cases, and for reasons given in the above-cited cases we can not properly make findings herein as to the reasonableness of the through rates from points east of the Mississippi River to San Francisco, and these claims for reparation will be dismissed.

18 I. C. C. Rep.

No. 1704.  
ASSOCIATED JOBBERS OF LOS ANGELES  
v.  
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

*Submitted December 2, 1909. Decided April 5, 1910.*

1. Charge of \$2.50 per car exacted for delivering and receiving carload freight to and from industries located upon spurs and sidetracks within carriers' switching limits found unlawful when such carload freight is moving incidentally to a system-line haul; charge found not unlawful when such carload freight is moving incidentally to a foreign-line haul.
2. The spurs and sidetracks which connect industries with a carrier's rails within switching limits found to constitute a portion of the carrier's terminal facilities.
3. The delivery of a car upon an industrial siding found to be a substitute for delivery upon public team tracks, and, no additional service being involved, can not be made the basis for an additional charge.

*Joseph P. Loeb and Edward J. Kuster for complainants.*

*T. J. Norton and E. W. Camp for Atchison, Topeka & Santa Fe Railway Company.*

*P. F. Dunne and C. W. Durbrow for Southern Pacific Company.*

REPORT OF THE COMMISSION.

**LANE, Commissioner:**

Attack is made in this proceeding upon the charge of \$2.50 per car made by the defendant carriers for delivering or receiving interstate carload freight to or from industries located upon spurs or sidetracks within their switching limits, when such carload freight is moving incidentally to a line haul and the carrier receiving or delivering such freight receives the whole or any part of the compensation for such line haul. The complaint is directed against two separate and distinct practices, involving, on the one hand, the switching charge incident to a system-line haul, and, on the other, the switching charge incident to a foreign-line haul. These charges are carried in local terminal tariffs published by the respective defendants, as follows:

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**Amendment No. 9 to Santa Fe tariff, I. C. C., 4281:**

Between all points located within Los Angeles switching limits, freight carloads (when incident to line haul, system or foreign), \$2.50 per car.

**Southern Pacific Terminal tariff, I. C. C., 3011:**

Between depot and industry tracks and private sidings within switching limits as defined in item 100 on page 15 of this tariff, including team tracks at Vernondale, Nadeau, Winthrop, Grand Avenue, University, Aurant, and Maier, Cal., "Freight, carloads, when incidental to a line haul, rate per car \$2.50."

San Pedro, Los Angeles & Salt Lake Railroad Company's terminal tariff, I. C. C., 28:

Between San Pedro, Los Angeles & Salt Lake Railroad freight yards or the transfer tracks of connecting lines and industries, warehouses or private sidetracks within yard limits (when incident to line haul, local or foreign), \$2.50 per car.

Complainant contends that the charge when made incident to a system-line haul is illegal inasmuch as the service for which the charge is made is an ordinary and necessary incident of carriage, that the compensation for that service is and must be included as a matter of law in the freight rate, and that the segregation of this charge is not permitted by law. In addition the complainant insists that the charge constitutes an unlawful discrimination under section 2 of the act to regulate commerce, also that it constitutes an unlawful preference under section 3, and that the charge for the service, if such charge may be made, is unreasonable and excessive in amount. As to the charge when made incident to a foreign-line haul, complainant urges that as each defendant receives out of the through rate from the connecting line a minimum compensation of \$7.50 per car for the service between the interchange tracks and the industries, it is unreasonable and unlawful to exact an additional sum from the shipper for the same service; that the switching line is merely a connecting carrier participating in the joint rate; that inasmuch as the bills of lading contemplate service on industry tracks, even when such service is incident to a foreign-line haul, the carrier issuing the bill of lading must fully perform its contract without additional charge.

Each of the carriers here involved has designated certain territory as within its switching or yard limits in the city of Los Angeles, extending for 6 or 7 miles in a general easterly and westerly direction, and including numerous tracks, main lines, branch lines, industry spurs, classification tracks, team tracks, freight-shed tracks, hold tracks, repair tracks, and others, and also their stations, freight sheds, derricks, roundhouses, and other structures. Freight moving in carloads is delivered at team tracks, at freight sheds, or at industry spurs. At team tracks and freight sheds no charge is imposed for the receipt or delivery of such carload freight over and above the freight rate named in the tariffs, while at industry spurs an additional charge of

\$2.50 is imposed on every loaded car moving either in or out. These industry spurs vary in length, some leading directly from the main track into or alongside of the industries served, while others are of greater length and branch at one or more points, short spurs running off from what is known as the "lead" to serve other industries in the immediate neighborhood. These spurs have been constructed under substantially uniform contracts. The standard form of the Southern Pacific Company provides as follows:

1. Undersigned (shipper) will pay cost of constructing above-described track (rails, splices, bolts, switches, frogs, switch stands, and connections to be furnished by and at the cost of Southern Pacific Company), whether such cost may be more or less than amount of foregoing approximate estimate.

2. Said track shall be under full control of Southern Pacific Company, and may be used at discretion of said company for shipments or delivery of any freight, but the business of the undersigned shall always have preference.

3. All material in said track furnished at expense of Southern Pacific Company, whether in original construction or by any way of replacements or repairs, shall be and remain exclusive property of Southern Pacific Company, and said Southern Pacific Company shall keep said track in repair.

4. In case said track shall not be used by undersigned for period of one year, said Southern Pacific Company may, at its option, remove said track.

5. All goods shipped from or to said track by rail, routing of which is controlled, or may be reasonably held to be controlled, by or through undersigned, shall, when forwarded, be over such railroads as may be selected by Southern Pacific Company, provided rate of charge shall be as low as that from or to point in question by any other rail route.

The Santa Fe contract contains this provision:

The title to said track, and to all the rails, ties, bolts, switches, fastenings, and fixtures connected therewith, and to all other property which may be furnished by the railway company in the maintenance of said track, shall at all times be and remain in said railway company, and said railway company may use the same for other purposes than the delivery of freight to or the receipt of freight from the second party, provided that such use shall inconvenience the business of the second party as little as possible consistent therewith; and at any time after the termination of this contract or the obligation of the railway company, as herein provided, to maintain such track, the railway company shall have the right to remove said track and every part thereof.

None of the industries at Los Angeles furnishes its own motive power, and interline switching is done from the interchange track to the industry by the locomotives of the delivering line, the carrier performing the switching service.

The basic theory of the complainant's case is that these industry spurs are part of the receiving and delivering systems of the carriers, which theory is met by the defendants with the proposition that these spurs are essentially plant facilities constructed for the convenience of the shipper rather than that of the carrier. In a sense and within proper limitations, both of these contentions are sound. These industry spur tracks are not private, in that the carrier may use them

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for purposes of its own—as for storage of cars, as leads to other industries, and sometimes for public delivery. They are often laid upon public streets and over private property, are operated exclusively by the railroad with its own engines, and furnish means of interindustry conveyance by rail, for which the carrier properly imposes a switching charge. Thus, in connecting its main line directly with a spur, the carrier serves itself in various ways; it gains an extension of its own line for various terminal uses, makes a new highway for intercommunication between the carrier and the industry and likewise between each industry so connected and all others having a similar connection, and it attaches the industry to the carrier in such a way that the latter has a practical assurance of the industry's traffic both outbound and inbound. On the other hand, there can be no doubt but that the industry also benefits by such connection, in that it can receive by this spur track direct delivery of its freight without the expense and trouble of draying to and from public team tracks. Each of such spurs is in a real sense a railroad terminal at which the carrier receives and delivers freight—a special, and generally in practice an exclusive, railroad depot for the carload freight of a particular shipper. There are literally hundreds of thousands of such tracks in this country. We have knowledge sufficient on which to base the conclusion that without such industry tracks the carriers of the country at large would be utterly lacking in adequate terminal facilities. For forty years and more it has been the policy of the railroads to develop traffic and facilitate its movement by the construction of such spur lines, and so extensive has become this method of direct delivery by rail that it is difficult to conceive of any system which might be devised for conducting the vast volume of our heavy traffic without the spur track, which serves the elevator, the coke oven, the coal tipple, the sawmill, the factory, the blast furnace, the stone quarry, and the jobbing house. In view of these conditions it would be manifestly unfair to treat the industrial spur as a plant facility, a shipper's convenience; it is in fact a necessity to both the carrier and the shipper under modern conditions of business and transportation.

We are fully convinced that the complainant's view of the nature of these tracks is correct and that they are portions of the terminal facilities of the carrier with whose lines they connect, and, together with the team tracks and other yards, form the terminal facilities of these carriers. In saying this we are fully conscious of the authority of the *Alton case* (*Chicago & Alton v. United States*, 156 Fed. Rep., 558) and the *General Electric* and *Solvay Process cases*, 14 I. C. C. Rep., 237, 246. Such industrial spurs as are here considered, however, are of a totally different character and of a different nature

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from those considered in these three named cases. They correspond rather to the railroad tracks leading to the interchange tracks with such industries, and the switching movement given by the carriers without extra charge to such interchange tracks passed unquestioned in the above cases. It was assumed by court and Commission that there was no violation of law in placing a car at a point where an industry engine could connect with it and take it within the plant. But in Los Angeles there are no tracks of this character. Each of the spurs here considered is in a real sense a railroad terminal at which the carrier receives and delivers freight. In recognition of such relationship the carriers of the land universally treat such industry spurs as portions of their terminals, making no extra charge for service thereto when the carrier receives the benefit of the line haul out or in. To this generalization, covering perhaps ten thousand cities and towns in the United States, the defendants could name but three exceptions, the cities of Los Angeles, San Francisco, and San Diego. In these an additional charge is made for track receipt or delivery. When asked why this charge was made at these points, the traffic manager of one road replied, "Because we can get it." Another railroad official explained the nonexistence of such a charge at all other points upon his own line, as well as throughout the country at large, by saying that the absence of such charge was a "tribute to competition." It appears that the same charge for such delivery has been made by all of the carriers at Los Angeles as long as the railroads have had access to that city. It was first imposed by the Southern Pacific and, as the other lines came in, they adopted the policy of the line already there. As to certain commodities such charge was not imposed until quite recently, and at all times, until the Hepburn Act went into effect, there was great variation in the charge as between individual shippers.

There are 97 places in California to which what are known as coast terminal rates apply, rates lower than to intermediate points. The theory justifying these lower rates is that water competition compels their maintenance, yet in only the three cities named is there such a charge for spur-track delivery, though in many of such places such delivery is furnished. To the north, in Portland, Seattle, Tacoma, and a large number of other points which also enjoy coast terminal rates, the Southern Pacific, Northern Pacific, and Great Northern lines impose no such charge, and to the east where defendant lines have their termini in cities competing with Los Angeles, this charge is also unknown.

The American railroad rate has always been recognized as covering the full service which the carrier gives—in furnishing the car, a proper place at which to load it, the conveyance of that loaded car,

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and its terminal delivery. These various services may be broken up into their component parts and a charge imposed for each, as is the case in England, where by law the Government has fixed a schedule of maximum rates for "conveyance" between stations and a separate schedule of maximum terminals, so called, which includes a fixed charge, uniform throughout the country, for a "station terminal" at each end of the haul, if the station is used, but not otherwise. So that, under the English system, in order to arrive at the total rate applicable upon a shipment, the conveyance rate must be added to the station terminal. ("Service terminals" for loading and unloading, etc., are also separately stated and charged for.) This method of stating rates has never obtained in this country, at least so far as the records of this Commission show. The rate, which it is required shall be published, is a complete rate, which includes not only the charge for hauling, but the charge for the use of the terminals at both ends of the line.

The provisions of the act to regulate commerce were enacted with respect to the American method of stating rates, and when it is provided in section 6 that the schedules, which shall be published and filed with the Commission, "shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed," it was not intended that the carriers should be required to separately state what are known in the English law as station terminals—that is to say, that they shall state separately the hauling charge between the stations and the charge for the use of the terminal at both ends of the line. The terminal charges referred to in section 6, and which *must* be expressly set forth in the carrier's tariff, are those for other services at the terminal which the carrier may furnish, such as storage, elevation, switching, and cartage. This construction of the act is borne out fully by its history and has been formally accepted by railroad counsel in advising the carriers. The railroads recognize their duty to make delivery under the flat rate stated in their tariffs, and such delivery is made upon industry tracks, which are part of the carrier's terminals, without additional charge. They treat a dependent spur as a part of their own depot to which the published rate carries all freight. They have recognized the value of having industries located on their tracks and have competed, in proper and in improper ways, to secure them as dependencies. They have, accordingly, given to such industries the same service that they give at their team tracks, treating the one as the substitute or equivalent of the other. If delivery is made at the team track the carrier must haul the car from the main line and place it on the team track. And so, if delivery is to be made at an industry, it must be conveyed from the



main line to the industry. In the former as in the latter case there is an inter-terminal switching and a placement of the car.

The refinement of the English method of stating rates has not appealed to the mind of the American railroad man, for the same reason, perhaps, that American hotel keepers do not make a separate charge to their guests for lights or soap. The American railroad rate is made to cover a terminal delivery, while the English railroads make a separate charge for the use of their terminals. In England, if the terminal of the carrier is not used, the stated terminal charge is not imposed. *Beale & Wyman*, "Railroad Rate Regulation," sec. 694; *L. & Y. R. v. Gidlow*, L. R. 7 H. L., 517; *N. S. R. v. Salt Union*, 10 Ry. & Ca. Tr. Cas., 161; *Tennant & Co. v. Caledonian Ry.*, 10 Ry. & Ca. Tr. Cas., 194; *Simonds & Son v. G. W. R.*, 3 Boyle & Waghorn, 17.

In the case of the *North Staffordshire Ry. Co. v. Salt Union*, *supra*, it was said:

It is not implied in our judgment that the railway company can charge beyond the conveyance rate for anything done on their own lines which is properly incidental to delivery or collection of traffic to or from sidings, no matter how much the cost and trouble may be increased by the inconvenience of the siding or the nature of the traffic, unless the defects or inconveniences are such as to relieve the railway company from their duty to deliver and collect. The very existence of a siding implies, in practice, that the railway company must, in order to collect and deliver from or to the siding, do on their own lines something beyond the mere work of transit. But they may be entitled to make a carrier's or service charge if they are required, for the convenience of the siding owner, to do work on his siding; and where they are so required, then, if by reason of the insufficiency of the siding or otherwise, that work involves extra work on their own line, that extra work may be a ground for an extra charge.

The English cases as a whole seem to proceed upon the theory that a switching movement onto a "private" siding, one not owned by the railroad and which is not a part of the railroad's own terminals, justifies an additional charge in some cases, but one not equal to the rate that would be charged if delivery had been made upon the railroad's own terminal. In this country the railroads have recognized by universal custom that it is but fair, where their team tracks are not used, to give delivery without extra charge at an industry track as an equivalent service—although where the shipper provides tracks, land, and facilities, the mere switching service furnished by the carrier is in many cases by no means equivalent in cost to the expense attaching to delivery upon its own tracks.

The theory of defendants is that in placing the car upon a side track it is giving a terminal service in the nature of cartage by rail, ignoring the fact that this so-called cartage antecedes any delivery and is nothing more than the placing of a car on a specially indicated spur track instead of in a large yard. Cartage may, of course, be fur-

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nished as an accessorial service by the delivering carrier, and it may charge therefor as a distinct and separate terminal service, but such cartage presupposes delivery upon the team tracks of the carrier and is supplementary thereto. It is a service additional to that which the regular tariff rate pays for, and therefore may, possibly must, be properly the subject of an additional and distinct charge. The parallel between such service and the delivery made upon a spur track could only be found if the car were first ordered by the consignee to be placed upon a team track for delivery, and later, after such movement had taken place, was ordered to the private track of the consignee. For such a switching terminal service carriers may charge, and, in fact, do, but to such charge no exception can properly be taken. It is a terminal charge of the character required to be published under section 6 of the act to regulate commerce, a charge for a service rendered at a terminal supplementing the delivery which the carrier has given and for which it has been paid in the transportation rate. The service here under consideration, however, is a delivery service and nothing more; the delivery being made at one of the carrier's tracks which is removed at a greater or less distance from its public yards. Spur-track delivery is a substitute service, a service which it has solicited the right to give, as the evidence here shows, a service which costs the industry for the installation of the track and the use of its property as a railway terminal. It is a service over the carrier's own rails to a point where it yields possession of the property transported and which involves no greater expense than would team-track delivery. It relieves the carrier's team tracks and sheds, necessitating less outlay for expense of yards in a crowded city, promotes the speedy release of equipment, and vastly aids in conducting a commerce which is greater than the carrier's own facilities could freely, adequately, and economically handle.

Again it is not to be overlooked that the delivery given on an industry spur is not supplemental to any other delivery. Cars destined to industry spurs are not placed first at a spur, depot, or on the team tracks, or at the sheds, and later switched to oblige the consignee. A train of freight cars goes to the breaking-up yards which lie at the entrance to the city, and there it is divided up with respect to the character of the freight in the various cars and their destination. No one has access to the cars at this point. This yard is purely a railroad facility. After the cars are segregated they are taken to the tracks to which they are ordered—some to the various team tracks distributed along the main line, some to different industries, some perhaps to the railroad shops or to freight sheds or to the stock yards. Before the cars are placed the consignees are given

notice of the tracks to which they are to be sent, so that there is no confusion, and the switch engines which place the cars on one track also serve to haul the "loads" in and "empties" out at the other tracks. After a most exhaustive inquiry we can not find, taking this service as a whole in the same way that it is treated by the carriers, that the service is more expensive to the carrier than if all cars were given team-track delivery.

An additional charge may be made when an additional service is given. But the service here given is not additional to that for which the rate pays. If the shipper pays for team-track delivery and does not receive it, but asks instead and is given a sidetrack delivery which costs the carrier no more, he may not be compelled to pay an additional charge upon the assumption that he has received a terminal team-track service which has not been given. A carrier may not so construct its rates as to compel an extra charge for like service, and this, in our judgment, the defendants at Los Angeles have done.

Since this case was argued before the Commission, the Supreme Court of the United States has handed down an opinion, written by Mr. Justice Brewer, in what is known as the *Union Stock Yards case*, and the carriers defending have drawn our attention to this case as fully supporting the position which they take. That opinion holds that a carrier is justified in charging a reasonable rate for a delivery which it can not make upon its own line, and that this rate, when separately stated, must be judged as to its reasonableness by itself. The doctrine therein announced we accept fully. We have no right to take from an independent delivering road any portion of a reasonable charge because the line charge, when added to the transportation rate of a connecting line, makes an unreasonable total charge. We must deal with the unreasonable rate of the preceding carrier, if the aggregate of the rate to destination and the special delivery required is excessive and unlawful.

In the *Union Stock Yards case* emphasis is placed upon the fact that the Union Stock Yards Railroad is the property of a separate and distinct legal entity, which makes a charge for the service it renders to the main line entering Chicago. That rate for the service given, having been held to be reasonable, was not properly subject to reduction because other rates of connecting roads which form the through route were unreasonable. Therefore, says the court—

If any shipper is wronged by the aggregate charge from the place of shipment to the Union Stock Yards it would seem necessarily to follow that the wrong was done in the prior charges for transportation, and, as we have already stated, should be corrected by proper proceedings against the companies guilty of that wrong, otherwise injustice will be done. If this charge, reasonable in itself, be reduced, the Union Stock Yards Company will suffer loss while the real wrongdoers will escape.

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In other words, if the Southern Pacific Railroad at Los Angeles made connection with an independent belt-line railroad, which led to various industries, and provided in its tariffs that delivery on such belt line would cost \$2 extra per car, this Commission could not reduce this \$2 charge, provided the same were reasonable for the service which the belt line gave. Such holding is not tantamount, however, to a finding that the Southern Pacific might itself charge \$2 for delivery to such industries when located on its own tracks, if such delivery was no more expensive than the delivery included in its own transportation rate. The governing principle of Mr. Justice Brewer's opinion is that one carrier may not be made to suffer for the shortcomings of another. The Stock Yards Railroad should not have its revenue abridged because the Rock Island Railroad, for instance, charges a rate to Chicago which includes the cost of a delivery which it does not render. In attacking the unlawful charge we must move back from the terminal road exacting the reasonable rate for the service it gives to the connection charging an excessive amount for its service. This is far, indeed, from holding that a carrier which delivers freight at a spur track at its own terminal is rendering a service which justifies the imposition of an additional charge. In fact, Mr. Justice White, in a preceding case arising out of this terminal charge at Chicago, distinctly held that the principles laid down in that decision, *I. C. C. v. C., B. & Q.*, 186 U. S., 320, were not to be construed as necessarily governing in a case where delivery was made upon a carrier's own tracks.

We have dealt heretofore with delivery on industry tracks which are a part of the terminal system of the carrier having the line haul. We now come to consider the second question involved in this case: The legality of the charge of \$2.50 per car imposed for delivery upon industry spurs when the line haul is made by a foreign carrier. To illustrate: Freight originating at Kansas City, Mo., may be sent to Los Angeles by either the Southern Pacific or the Santa Fe. The Southern Pacific solicits a carload of freight destined to a consignee in Los Angeles who has an industry spur to the Santa Fe line. The Southern Pacific would lose the transportation of this freight did it not have an arrangement with the Santa Fe Railroad by which the latter agreed to deliver the car upon the spur of the consignee. To effect this purpose, and for mutual advantage, the carriers have entered into an arrangement by which they mutually effect delivery upon each other's industry spurs. This is one of the advantages of having such sidetracks. Accordingly the Southern Pacific carries the Kansas City car to Los Angeles and in that city places it upon what is known as an interchange track, a track used by both of the carriers for the interchange of equipment. From that point the car is conveyed

by the Santa Fe to the designated sidetrack of the industry. Under the tariffs quoted above the consignee pays to the Santa Fe road for such service, in addition to the through rate from Kansas City to Los Angeles, an arbitrary delivery charge of \$2.50. It appears, however, from the record in this case that this is not all that the Santa Fe receives for the service which it renders. An agreement exists between the two roads by which the Southern Pacific pays to the Santa Fe 50 cents per ton, or a minimum of \$7.50 per car, for the privilege of having delivery made upon the industrial tracks connected with the Santa Fe road. That there may be no mistake as to just what the purpose of this arrangement is we will quote at some length from the testimony of Traffic Manager Chambers of the Santa Fe. Being asked by the attorney for that road, Mr. Camp, as to the justification for such an arrangement, Mr. Chambers said:

It was largely for the privilege of one line being permitted to do business to the industries located on the other, figuring that the lines serving the industry lost the line haul on those shipments.

Mr. CAMP. It was a charge for the use of the Southern Pacific terminal so far as our line was concerned?

Mr. CHAMBERS. Yes.

Commissioner. It is practically making a joint rate over onto the other's tracks?

Mr. CHAMBERS. Yes, sir; that is what it is. The Santa Fe could reach the industries on the Southern Pacific rails prior to that time by delivering to the Southern Pacific at Stockton and giving them 25 per cent of the Missouri River rate, or west of the Missouri proportion of the through rate.

Commissioner. So that by the existence of a large number of industries on industrial tracks on the Southern Pacific lines in San Francisco they get a proportion of your through rate on business which you haul into San Francisco because of the interchange and for the interchange service?

Mr. CHAMBERS. Yes, sir; business that we haul in for those industries.

Commissioner. Is it usual as between carriers where they do not serve the same territory?

Mr. CHAMBERS. It is, of course, on competitive business altogether. On noncompetitive business there is no reason for it at all, and it does not apply on the noncompetitive business.

Commissioner. Then they make an interchange arrangement at a terminal point?

Mr. CHAMBERS. Yes, sir. That is the condition as between the Santa Fe and Southern Pacific as to switching arrangements. In some places the charge is \$10 a car, some \$5, some \$3; it varies; and some so much per hundred pounds.

Commissioner. This does not apply here from any points that both lines do not reach?

Mr. CHAMBERS. No; it applies just on competitive business.

Mr. CAMP. And is a hiring of the other company's facilities for that service?

Mr. CHAMBERS. Yes.

Mr. MANN. It is paid to the other company, this \$7.50 per car, for what purpose?

Mr. CHAMBERS. I have just explained, for the privilege of reaching facilities on the tracks of the other.

Mr. MANN. And in order to receive that \$7.50 per car from the Southern Pacific for placing a Southern Pacific car at one of your industries, what does that \$7.50 pay for to your company?

Mr. CHAMBERS. It pays for the same thing, it pays for the privilege, and the Southern Pacific have got to pay for the privilege of getting onto our lines.

Mr. MANN. Is it not for the purpose and privilege, as you say, for the facilities of your company; is it not for the privilege of the industry tracks of your company which are among its facilities?

Mr. CHAMBERS. For the industry tracks?

Mr. MANN. Yes.

Mr. CHAMBERS. Yes; it is confined to the industry tracks.

Mr. MANN. Then the \$7.50 pays for that car reaching the industry tracks?

Mr. CHAMBERS. Yes; that is—

Mr. MANN. Why do you charge \$2.50 more for the extra?

Mr. CHAMBERS. That is a separate service altogether. It is just like any other division arrangement.

Mr. MANN. I have understood you to just say that \$7.50 pays for the car reaching the industry.

Mr. CHAMBERS. We could not afford to have a switching line for any other purpose than doing switching, and do it for \$2.50 a car, and you must figure, also, that allowing the other line to reach the industry on an equality with yourself you put them in a position to compete with you, and you have to have something for that. You lose the line haul on that traffic. Otherwise you are very likely to get it, and it is a question of two or three or four hundred dollars; and then there is considerable risk, also, which has to be assumed by the switching line.

Mr. MANN. My difficulty, Mr. Chambers, is this, and I think perhaps you understand it. If you have received \$7.50 for the purpose of taking the industry car and giving to the Southern Pacific your facilities, among which, of course, are your industry tracks, I do not see why you should charge \$2.50 more to the industry after having been already paid \$7.50 for the service.

Mr. CHAMBERS. Frequently the division of the through rate from the junction point to the destination is greater than the local rate is between local railroads, and there is something charged for allowing the other line to reach the destination in competition with the line which controls the destination point, just like it is between the Southern Pacific and ourselves. We get to San Jose, for example, from the east; they get 23 per cent of the terminal rate, and the local rate in addition—not to San Jose, but some point that is not a terminal.

On this same subject Mr. G. W. Luce, general freight agent of the Southern Pacific system, testified with reference to the San Francisco situation, which is the same as at Los Angeles, as follows:

Mr. LUCE. I think the Santa Fe's rails reached San Francisco in 1902; that is, they were doing some business, but they were not actually open for business at that time, except by the handling of our engines over joint track. A short time afterwards they applied to us for an interchange arrangement between their company and ours, in San Francisco. We replied to them that there could be no interchange here, for the reason that interchange was indicated by or covered what we might call reciprocity. They had nothing at all to give us for what we gave them, and therefore there could be no interchange. We stood on that ground until after the fire—some time in 1907. When the downtown district was burned, quite a few people went to the tracks of the Santa Fe and a few went to our tracks. They then had some business that we might enjoy that we could not otherwise if we had not interchange arrangements, and we felt then that the interchange could take place, because they had business on their rails. We did not feel, when they came in with their bare rails, we should turn over a part to them of our business, which was an accumulation of a quarter of a century; and our expenses in this city permitted

them to secure business from us, and we secured \$2.50 nominal switching charge, while the merchants then on our tracks were able to route via the Santa Fe, if they wanted to, via the Mojave gateway; and we would place on their tracks reaching San Francisco the same as we would via Ogden or El Paso. Therefore the merchants had no reason to complain, because they could reach our tracks via the Santa Fe at Mojave as well as via the San Francisco interchange, so far as desiring to give the Santa Fe business was concerned. We would of course get, in comparison with our revenue by the other gateways—Ogden and El Paso—a very small revenue; but after they had some business we thought we might want to share in, a mutual interchange of traffic took place, and we made the arrangement set forth—that is, 50 cents per ton on Colorado traffic and east, both originating at and destined to those points—and we made the same arrangement at all interchange points, such as Visalia, Fresno, Stockton, and Los Angeles.

Mr. DUNNE. On the same terms?

Mr. LUCE. On the same terms, for the reason we could not surrender our business for a mere pittance of \$2.50 a car; and they acquiesced in that and thought it was fair and made the same terms, and we likewise made the same terms with the San Pedro Railroad at Los Angeles.

Mr. DUNNE. That, then, was strictly an intercorporate arrangement?

Mr. LUCE. Yes, sir.

Mr. DUNNE. It was not an arrangement as between the carrier and the shipper?

Mr. LUCE. Not at all.

Mr. DUNNE. And it was based upon what you thought to be just and equitable principles under the circumstances?

Mr. LUCE. Yes, sir; merely for the transmission of our traffic to another carrier's rails, and not for switching service to the breaking up point at all.

So far, therefore, as the carriers are concerned, the Southern Pacific Railroad upon a haul from a competitive point pays out of its rate (and this expressly appears to be the fact) a minimum of \$7.50 per car for the right to have delivery made upon the Santa Fe's industry spurs. The Southern Pacific gives no delivery at its terminals, but switches the car to an interchange track, from which the Santa Fe takes it to the consignee's industry spur, and it is to be noted in this connection that this arrangement applies exclusively as to industries having spur tracks. (There is no such interchange between the two carriers for delivery upon their respective team tracks.) The Santa Fe receives a minimum of \$10 for such delivery, \$7.50 being paid by the Southern Pacific and \$2.50 being paid by the consignee. The question presented is whether the charge made by the Santa Fe under such circumstances is lawful.

It is the contention of the complainants that this \$7.50 paid by the Southern Pacific is in full payment for the switching charge to the industry and that the consignee should not be required to pay \$2.50 or any amount additional. We think that as a matter of law, as announced by the Supreme Court, the position of the complainants can not be sustained. A delivery is here made upon the tracks of another carrier and a separate charge is made therefor and stated in the tariffs, although the Southern Pacific undertakes to make delivery upon the Santa Fe industrial spur and has entered into an arrange-

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ment with the Santa Fe to effect this end. It may not be said, we think, under the authority of the *Union Stock Yards case*, that such delivery may not be the subject of a distinct and separate charge, notwithstanding the fact that the connecting carrier for its own purposes makes a payment to the delivering carrier—either as a bonus, if there can be such a thing recognized in the law, or for the use of its terminal facilities—which is three times the amount of the switching charge imposed. If a shipper desires delivery made upon the Santa Fe tracks, he can ship by way of the Santa Fe without incurring the switching charge of \$2.50 per car under the holding in this case. If, however, he prefers to ship by way of the Southern Pacific road and have delivery made upon the Santa Fe industrial track, the terminal charge imposed by the Santa Fe must be regarded as an additional charge for an additional service. We do not find in the record sufficient data upon which to base a finding as to the reasonableness of the amount of this charge of \$2.50 for interline switching to industry tracks, and for the purposes of the present order will assume it to be reasonable.

An order will be entered condemning as illegal and unjust the charge of \$2.50 per car made by the defendant carriers for delivering or receiving interstate carload freight to or from industries located upon spurs or sidetracks within their switching limits when such carload freight is moving incidentally to a system line haul.

PROUTY, *Commissioner*, concurring:

I do not think that the rate carries with it, as a general proposition, delivery upon a private track. Under many circumstances a carrier may refuse altogether to make a private-track delivery, and it may impose different charges for different deliveries of that character. But it seems to me that here these defendants, by their conduct, have made these spur tracks a part of their terminal facilities and that they must be so treated until the whole method of doing business has been changed.

This record shows that the cost to the railway of making delivery upon the private track is no greater than upon the team track. It is worth more to the shipper to receive his car upon the private track, but it appears that the expense of furnishing these private tracks is often very considerable and that, on the whole, the shipper, by furnishing the track, pays all he ought to for the privilege. Inasmuch, therefore, as it costs the defendants nothing additional to render this service, and as the shipper has paid for the value of the service to him, it seems to me unreasonable that the railroad should impose and collect this charge. The carrier thereby charges for a service which costs it nothing, and the shipper is charged for a service for which he has already paid.

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HARLAN, *Commissioner*, also concurring:

In adjusting their rates with a view to drawing from the shipping and traveling public sufficient revenues to meet the cost of operation and maintenance and to pay a reasonable return on the investment carriers have not been left altogether free of restriction and beyond control. Certain general principles have been established to which they must conform in constructing their tariff schedules. The law provides that an interstate carrier shall charge no more than a reasonable rate for each service that it undertakes on behalf of a shipper or passenger, and that in fixing its charges it must refrain from discriminations and preferences. It follows, therefore, that its rate schedules can not be constructed at haphazard, but must, in an orderly, logical, and consistent manner, be built up not only on the basis of reasonableness but so as to avoid the inequalities that the law forbids and makes unlawful. It was the wrong done by carriers through their rates that caused the legislative power to set boundaries to their former comparative freedom in rate making and to establish certain fixed principles for their control. The law now requires that rate schedules shall be constructed upon a foundation of justice to the shipper as well as to the carrier and upon broad equities with respect to the rights of communities as well as of individuals. And it is because I think the defendants, in setting up the particular charge here complained of, have departed from these principles, that I venture, in the form of a concurring opinion, to give expression to the impression that an examination of this record has made upon me:

The ordinary shipper of merchandise by the carload must incur the expense of hauling his shipments by wagon to a public team track at which the carrier has placed its cars for loading. He must incur a like expense in taking his inbound carload freight to his factory or warehouse or place of business. The large shipper, on the other hand, by erecting his factory or warehouse near the line of a carrier and having it connected with the carrier's tracks by a spur track of his own, is enabled to load and unload the car at his door and thus to save the very heavy wagon expense that the handling of his traffic would otherwise require. When the results are compared it is clear that the shipper that enjoys the benefit of a spur track and a store-door delivery has a decided advantage over shippers that haul their merchandise by wagon to and from the public team tracks. And, considered theoretically and purely from the standpoint of the value of such a delivery to shippers, the placing or "spotting" of cars on spur tracks at the doors of warehouses and factories might be regarded as an extra service for which, as is actually done at the points here involved, the carrier might make a

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charge in addition to the rate. Nevertheless it has been the universal practice in this country for the carrier having the line haul not to make an additional charge for setting a car for loading or unloading at the shipper's door upon a spur or side track connected with its own terminals. Counsel advise us that there is no exception to this general custom except at the three points involved in the complaint, namely, San Francisco, Los Angeles, and San Diego; if further exceptions exist, and at this moment I recall none, they must be few in number and are doubtless the result of special conditions.

The general rate schedules of carriers have been adjusted on the theory that the rates ought to be fixed high enough to warrant carriers in including the spur track service without extra charge, and not on the theory that additional revenues would be available from that source. The carload rates of carriers to and from a given destination by long established custom include the switching of the car to and from the store door on spur tracks directly connected with their respective terminals; and this is no less true under joint through rates. I do not stop, therefore, to consider whether the charge now made for such a service at San Francisco, Los Angeles, and San Diego is a reasonable charge. Its reasonableness may be conceded; at any rate, the shipper at these points, even though on a spur track, may still insist on his right to load and unload his cars by wagon on a public team track if he finds that a more economical course. Nor do I lay any particular stress upon the fact, which this record seems to establish, that the public team tracks of the defendants at the points in question are inadequate to enable them to handle the commerce of those communities without the additional facilities that the private spur tracks give them. These details I do not regard as controlling although not without significance. My point is that the defendants, in separating the spur-track service from the line haul to these three points and dealing with it as an additional service for which an additional charge may be made, depart from the general practice of carriers and their own practice at other points, and in doing so thereby violate not only section 3 of the act but section 1 as well. A system of rates built in strict recognition of the principles embodied in the first four sections of the act must inevitably be reasonable, free from preferences, without discriminations, and containing no rates without justifying cause that are lower for the longer than for the shorter haul. A schedule of rates so adjusted must of necessity be consistent and harmonious. Assuming, for the purposes of this proceeding, that the several rate structures of these defendants have been built upon foundations of general reasonableness and freedom from unlawful inequalities, they seem to me nevertheless inconsistent and inharmonious in respect of the particular charge of which complaint is here made. Examining

the schedules in detail, we find that one of the principles appearing throughout their whole structure is that the rates, whether local or joint, include delivery at store door on spur tracks. The consistency and harmony of the structure is destroyed by the fact that at these three points alone, out of all other points on their lines, store-door delivery on spur tracks is considered by the defendants as a separate service, in addition to the transportation to those points, and an additional charge is made therefor. In my judgment this departure from the general theory upon which the schedules were built subjects those points to an undue discrimination and makes the through charges unreasonable. Not only do the defendants at those points put their tariff schedules at variance with the universal practice of carriers, but, without a justifying cause so far as the record discloses, they make an exception at those points to a fixed principle that underlies their own general rates. Upon broad equitable grounds this seems to me to result in an unreasonable imposition upon the commerce of those three communities, the burden of which, as I understand the record, approximates \$200,000 a year.

The inequity of the situation is emphasized by the fact that identical rates for the transportation of all class traffic from trunk line and other defined territory have been extended to some 97 points at or near the Pacific coast, including San Francisco, Los Angeles, and San Diego. This adjustment has a history of many years and its significance and cause are thoroughly understood. The "terminal" rates, as they are called, are transportation rates and their extension to these 97 points seems to me to constitute a substantial admission by the defendants that the conditions and circumstances affecting transportation to those points are the same. At all these points, except the three here involved, the terminal rates include the movement of cars to and from store door on spur tracks directly connected with the terminals of the several defendants. At these three points alone is the service to and from the spur tracks separated from the line haul as an independent service. Under such circumstances I do not see how an additional charge may be justified. It is not necessary to inquire whether, as between a shipper using a team track at one of these points and a shipper using a spur track, the charge against the latter is discriminatory; it can not be doubted that a shipper on a spur track would willingly pay even more than the charge now exacted in order to avoid the liability to damage involved in loading and unloading a car on a team track and to save the larger cost of such handling by wagon. Nor is it necessary to inquire just how far the commerce of the three communities may be adversely affected in their competition with other communities. In my judgment, when no separation has been made, so far as their innumerable other

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stations are concerned, between the line haul and the "spotting" of cars on spur tracks, and no separate and additional charge for the latter service has been established, that principle in the general rate structures of these defendants can not lawfully be departed from at San Francisco, Los Angeles, and San Diego simply because, as one of the witnesses put it, the defendants are able easily to collect the charge at those great centers. The separation of the spur-track service, from what for convenience has been referred to as the line haul, and the extra charge therefor, involve a principle of transportation. Such a charge in order to be justifiable at any point must rest upon a general practice to impose it at all points. And I regard it as clearly unreasonable to impose the charge at these three points in the face of a general practice on the part of the defendants not to impose it at other points on their lines.

If the revenues derived by the defendants from the imposition of such a charge upon these three communities is unnecessary, in the sense that the total revenues otherwise derived from the conduct of their transportation are sufficient to meet the views hereinbefore expressed as to the income that carriers are reasonably entitled to have, then, the additional charge, made at those points only, is unreasonable. On the other hand, if the amount of the revenues accruing from that source is required in order to yield the defendants the total revenues that they ought reasonably to have, it is wholly unreasonable to cast the entire burden on San Francisco, Los Angeles, and San Diego. It should in some form be distributed over the entire lines of the defendants and not be imposed upon these three points alone.

Looking at the question from this point of view I have no difficulty in holding that the charge made by these defendants at San Francisco, Los Angeles, and San Diego is both unreasonable and unduly discriminatory.

**KNAPP, Chairman**, dissenting:

I can not agree with the conclusions of the majority in this case and will briefly outline the grounds upon which I dissent. In my opinion the order directed to be entered is unwarranted for two reasons: First, because the charge in question is not unlawful and therefore the Commission is without authority to compel its discontinuance; second, because the order is not justified by the facts and circumstances disclosed by the investigation.

Manifestly the exaction of an additional switching charge for private or spur-track delivery can not be condemned unless such charge violates some provision of the regulating statute. Inasmuch as the charge in controversy is made under definite and proper tariff

authority, the Commission has no power to require its elimination unless it contravenes one or more of the first three sections of the act.

To hold that this charge violates the first section involves a finding that it is either in and of itself unreasonable, that is to say excessive in amount, or that the aggregate charges for line haul and switching are unreasonable; and there is no evidence to support such a finding. Taking complainant's own proofs as to the cost of this spur-track delivery, to say nothing in this connection of its superior value to the consignee, it is evidently not unreasonable for the service performed. Indeed, the witnesses for complainant virtually conceded, and all the testimony shows, that \$2.50 per car is not excessive, if any charge whatever may be imposed. Moreover, the Commission has repeatedly found that terminal rates to Los Angeles and other Pacific-coast points are forced down by water competition to a lower basis than the defendants might lawfully exact, and there was really no pretence that the line rate plus the switching rate results in unreasonably high charges for the entire transportation. To this it may be added that the complaint was not brought upon the theory, nor was the contention made at the hearing, that this switching charge is excessive in amount and ought to be reduced, but distinctly upon the theory that it is unlawful to make any charge for spur-track delivery in addition to the line rate which covers team-track delivery. The real point in controversy is not whether this charge of \$2.50 a car is more than it ought to be, but whether defendants have the right to make any charge whatever, and I do not perceive that the record presents a question of unreasonableness under the first section.

This charge does not violate the second section. It is not within the prohibition against "any special rate, rebate, drawback, or other device," nor can it be said that spur-track delivery to a private industry is "like" service with public team-track delivery. If this section is violated, the defendants are liable to indictment, and a criminal prosecution would be the appropriate proceeding. It certainly is not necessary and would hardly seem to be suitable for the Commission to make an order requiring a carrier to cease and desist from a specific and clearly defined act which is a criminal misdemeanor if the charge in question violates the second section.

Nor does this charge violate the third section, on the showing now made. To say that the team-track consignee, who pays only the line rate but must incur the expense of cartage from the team track, is given "undue or unreasonable preference or advantage," and that the spur-track consignee, who pays \$2.50 per car more and saves from two to at least four times that amount of cartage, is subjected to "undue or unreasonable prejudice or disadvantage," is so palpably at variance with the conceded facts in this case, and with common experience and observation, as not to admit of serious

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argument. Plainly, as between team-track consignees and spur-track consignees at Los Angeles, there is absolutely nothing upon which the latter can predicate a violation of the third section. It may be that the exaction of this charge at Los Angeles, when no similar charge is imposed at other Pacific coast terminals, except San Francisco and San Diego, gives an unjust advantage to competing shippers at terminal points where spur-track delivery is made without additional charge. This aspect of the case was incidentally presented but was not made the subject of particular investigation. If it is really desired to base a claim for relief upon this ground the complainant is entitled to further hearing in order that the facts may be fully developed. I apprehend, however, that a finding of undue prejudice to Los Angeles shippers for this reason would warrant no more than an order to cease and desist from the ascertained discrimination, which would leave to defendants the choice of discontinuing the charge at Los Angeles or imposing it at competing points found to be unduly favored. That Los Angeles shippers are at a disadvantage because of this charge in competition with interior or eastern shippers has certainly not been shown and could not be seriously contended.

The majority report condemns this charge as "illegal and unjust." In my judgment this conclusion is untenable, because the charge is not illegal unless it violates some law which this Commission does not administer and under which it can grant no relief. To hold that it is unjust, in view of the undisputed facts, is merely to declare the opinion that although not in contravention of the act it is a charge which in equity and good conscience ought not to be made; and this opinion would seem to rest mainly upon the finding that no extra charge for spur-track delivery appears to be made anywhere in the United States except at Los Angeles, San Francisco, and San Diego. In other words, the custom which elsewhere prevails operates in some way to make the charge unlawful at the three places where it is imposed. But to my mind it is evident that the rights of carriers or shippers in respect of transportation charges subject to the regulating statute can not be limited by custom or usage however prevalent or long continued. That field of commercial activity has been removed from the domain of the common law by legislative enactment. Besides, if evidence of usage is at all material or entitled to any consideration, the conceded custom at Los Angeles for more than twenty years would establish the rights of the respective parties in that community with as much binding effect as the custom at Portland, Seattle, or Kansas City would determine corresponding rights at those places. I am not aware of any theory by which the obligations of carriers or shippers can be measured by *preponderance of custom*, since it is elementary that the custom which makes law must be con-

tinuous and generally observed in the locality where the question of right arises.

Without reviewing the authorities in point it seems clear to me that spur-track delivery is a service which carriers are not bound to perform at common law. In the absence of statutory requirements carriers by rail comply fully with their legal obligations in respect of delivery of freight by making delivery of less than carload shipments at their established depots or stations, and of carload shipments upon the team tracks which they provide and maintain for the general public. Moreover, sidetracks and spurs running to private industries or warehouses of particular shippers are usually constructed, as was shown to be the fact in this case, under some contract arrangement. The construction and maintenance of such side tracks and the delivery of cars thereon at the private warehouses of certain shippers is a special privilege or favor which carriers are under no obligation to grant either at common law or under the act to regulate commerce. The rate established by a railway company for transportation from city to city, or from station to station, provides for no more as a matter of law than general delivery at freight house or team track. Undoubtedly the carrier may, if it chooses to do so, render this additional service without extra compensation. But it is one thing to say that a carrier *may* perform such a service without charge and quite another thing to say that it *must* do so. Nor does the fact that carriers generally in other parts of the country furnish spur-track service gratuitously deprive these defendants of their legal right to make a reasonable charge to consignees for a valuable service which in the absence of special contract they are not bound to perform.

Without attempting to decide whether these industry tracks in Los Angeles are a part of the defendants' terminals or strictly private sidings, there is no question that the service performed for spur-track consignees is a different service from that performed for team-track consignees, and a much more valuable service. The testimony shows that cartage from team tracks to warehouses costs from \$5 to \$15 per carload, depending upon the distance hauled and the amount and character of the shipment. To say that the consignee who secures warehouse delivery of carload freight, at a charge of from one-half to less than one-fourth of the cost of cartage from team tracks, does not receive a more valuable service than the team-track consignee is to contradict the whole record in this case and disregard results which are obvious and conceded. If a carrier may make different rates on different articles because of differences in value, although carried at the same cost, why may not a carrier make differences in rates on the same article, although carried at the same cost, because of differences in place and manner of delivery which makes

one kind of delivery much more desirable and valuable than the other? Are not the convenience and conceded saving cheaply purchased? Does not the spur-track consignee in fact have an advantage over his team-track competitor, a direct pecuniary advantage, much greater than \$2.50 a car?

It must of course be conceded that private contracts, even though valid when made, become unlawful to the extent that their operation results in violation of the act; but, nevertheless, in considering the merits of this case it is impossible for me to overlook the fact that the consignees represented by complainant voluntarily entered into contracts for the construction of these spur tracks and delivery thereon with full knowledge and expectation that they would be required to pay an extra charge of \$2.50 per car for such delivery, and were apparently anxious, at least in most cases, to secure the service upon these terms; and I can not escape the impression that their present effort to retain the benefits of spur-track connection and delivery, and yet deprive the defendants of one of the material considerations for making these agreements, is not altogether free from criticism. For example, it appears that the Santa Fe has spur-track connection with 166 industries at Los Angeles, more than half of which have located upon its tracks since 1905. Each of these concerns was perfectly aware before contracting for spur-track service that the extra charge from which exemption is now sought would be imposed, and the arrangement was made with that understanding.

The suggestion in the concurring memorandum of Commissioner Prouty, that these consignees have paid for this special service by contributing to the cost of constructing the spur tracks in question, does not seem to me to be supported by anything appearing in or fairly deducible from the record. It is evident from what does appear that different spurs represent great differences in cost of construction, and it is equally apparent that there are great differences in the value of spur-track delivery to different consignees, depending upon the number of cars received, the saving in cartage, and other circumstances. To say that the expense originally incurred by the shipper in securing spur-track delivery under the standard contract, whether that expense was much or little, must be regarded as compensation to the carrier for the indefinite future for performing the service of spur-track delivery, however great or valuable that service may be, appears to me an indefensible proposition.

There is one aspect of the matter which seems of considerable importance, though perhaps without bearing upon the legal question involved, and that is the necessary effect of an order in accordance with the majority report in disturbing the present equality between all spur-track consignees in respect of the switching service in controversy. Under existing arrangements between the carriers each



defendant switches to industries on its own spur tracks the cars which have reached Los Angeles over another line, with the result that every spur-track consignee within the switching district of Los Angeles, no matter with what line his warehouse is connected or over what line his traffic arrives, secures warehouse delivery at the uniform charge of \$2.50 per car. This operates to put all consignees upon an equal footing and permits each to ship by any line, as may promote his convenience or advantage, and have delivery at the same cost. But if the order to be entered herein is enforced, the line bringing in the traffic must make delivery without extra charge on spur tracks connected with that line, while an additional charge must be paid, which may not be limited to \$2.50 a car, to secure delivery on spur tracks connected with another line. How this will work out can not of course be wholly foreseen, but it will necessarily produce more or less inequality and perhaps result, in some cases, in serious disadvantage.

For the reasons thus indicated, I disagree with the majority. I am convinced that an additional charge may lawfully be made for private-track or spur-track delivery, because it is a special service which the carrier is not required to perform, and a service of distinct value to the consignee, as compared with team-track delivery, for which the carrier may rightfully exact compensation. The charge in this case is admittedly reasonable in amount and its imposition violates no law which the Commission is appointed to administer. Upon the present record the complaint should be dismissed.

18 I. C. C. Rep.

No. 1649.

PACIFIC COAST JOBBERS' & MANUFACTURERS'  
ASSOCIATION

v.

SOUTHERN PACIFIC COMPANY ET AL.

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*Submitted December 2, 1909. Decided April 11, 1910.*

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Charge of \$2.50 per car exacted for delivering and receiving carload freight to and from industries located upon spurs and sidetracks within carriers' switching limits found unlawful when such carload freight is moving incidentally to a system-line haul; charge found not unlawful when such carload freight is moving incidentally to a foreign-line haul. *Associated Jobbers of Los Angeles v. A., T. & S. F. Ry. Co., ante, p. 310, followed.*

*Seth Mann* for complainants.

*P. F. Dunne* and *C. W. Durbrow* for the Southern Pacific Company.

*T. J. Norton, E. W. Camp, and H. D. Pillsbury* for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

This case presents precisely the same questions as are raised in *Associated Jobbers of Los Angeles v. A., T. & S. F. Ry. Co.*, 18 I. C. C. Rep., 310. Both cases were heard together, and the facts in each are similar. We find the imposition of the charge for receipt from or delivery upon a spur track when incident to a system-line haul to be unlawful and unjust under the facts and circumstances presented in this case, and an order will be entered accordingly.

KNAPP, *Chairman*, dissents for reasons stated in *Associated Jobbers of Los Angeles v. A., T. & S. F. Ry. Co., supra*.

18 I. C. C. Rep.

No. 2972.

WINONA CARRIAGE COMPANY

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

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*Submitted March 6, 1910. Decided May 2, 1910.*

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Complainant made less-than-carload shipments of bar steel over defendants' lines from Johnstown, Pa., via Chicago, Ill., to Winona, Minn., for which the rate for through less-than-carload shipments was charged. It appears that a combination rate made up of the less-than-carload rate to Chicago plus the carload rate from Chicago would be less than the through less-than-carload rate. Upon complaint requesting reparation upon the basis of the combination of the less-than-carload rate and the carload rate; *Held*, That the case presented does not disclose a typical through rate in excess of the combination of locals such as has been condemned in general terms by the Commission. Complaint dismissed.

*G. M. Stephen* for complainant.

*Henry Wolf Bikle* for Pennsylvania Railroad Company and Pennsylvania Company.

*William Ellis* for Chicago, Milwaukee & St. Paul Railway Company.

#### REPORT OF THE COMMISSION.

*LANE, Commissioner:*

January 15, 1908, complainant made a less-than-carload shipment of bar steel over the lines of the defendants from Johnstown, Pa., to Winona, Minn. This shipment weighed 22,060 pounds. February 24, 1908, complainant made a similar shipment weighing 21,105 pounds from and to the same points. There was collected on these shipments 41 cents per 100 pounds. We are unable to verify the rate charged on the first shipment. In Official Classification less-than-carload shipments of bar steel take fourth class, and fourth class through rate from Johnstown to Winona is 44 cents per 100 pounds. There appears to have been an undercharge on one of these shipments of 3 cents per 100 pounds. Examination of tariffs on file shows that February 11, 1908, the 41-cent rate became effective.

It is alleged in the complaint that the rate charged on the through less-than-carload shipments was unreasonable for the reason that at

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the same time over the same route there was a lower combination based on the less-than-carload rate of 23 cents from Johnstown to Chicago, Ill., and the carload rate of 10 cents per 100 pounds, 30,000 pounds minimum, from Chicago to Winona, making a combination of 33 cents. Reparation is asked for the difference between the charges collected and those that would have been collected had the 33-cent less-than-carload and carload combination rate been applied.

At the time these shipments moved the less-than-carload rate from Johnstown to Chicago was 23 cents per 100 pounds and from Chicago to Winona 23 cents per 100 pounds, making a combination of 46 cents. At the same time the through carload rate was made up of a combination rate of  $19\frac{1}{2}$  cents per 100 pounds on 36,000 pounds minimum from Johnstown to Chicago and 10 cents per 100 pounds on 30,000 pounds minimum from Chicago to Winona.

Defendants contend that a through less-than-carload rate can not properly be held to be unreasonable merely because a less-than-carload and a carload combination make lower. Stated in another way, the question here presented is whether a through charge on a shipment based on a less-than-carload rate between points of origin and destination is shown to be unreasonable because it exceeds the sum of the charges on a similar shipment based on a less-than-carload rate from the point of origin to an intermediate junction point plus the charge based on a carload rate from such intermediate junction point to destination.

The principle announced by the Commission in numerous cases is that in the absence of a justifying explanation a through rate in excess of the sum of the locals applicable to the same traffic over the same route is an unreasonable rate. The less-than-carload rate in this case under the tariffs of defendants requires the unloading of the traffic by the carriers in Chicago and the transfer from the eastern to the western car and reloading in an outbound car. In the case of a carload shipment the shipper must load his traffic at Chicago. The service therefore with respect to carload shipments either into or out of Chicago is not the same as would be the case with respect to less-than-carload shipments. The principle announced by the Commission seems to contemplate that where traffic is shipped over a certain route into a point and shipped out from that point moving from point of origin to destination under substantially similar circumstances and conditions with respect of the through rate and the combination, the lower combination rate than the through rate is *prima facie* unreasonable. No finding of the Commission on facts such as are presented in this case has been promulgated. There is no other evidence in this case in any way relating to the alleged unreasonableness of the charges made by the carriers on the two shipments involved which presents

any other question than the presumption as to the unreasonableness of the through rate based on the through less-than-carload rate where it exceeds the sum of the charge from the point of origin to Chicago based on the less-than-carload rate between Johnstown and Chicago and the charge from Chicago to Winona based on the carload rate between the latter points.

This case, in our opinion, does not present a through rate in excess of the combination of local rates within the Commission's rulings. Rates from Johnstown to Winona are adjusted in line with the rules of the Commission. The through carload rate represents the sum of two carload locals. The through less-than-carload rate is less than the sum of the two less-than-carload locals, being 41 cents as against two locals which amount to 46 cents.

Complainant requests the Commission to find that the combination of charges determined by treating the shipment part way as less-than-carload and the remainder of the distance as carload should measure the reasonableness of the through less-than-carload charge, a proposition which is clearly and inherently different from the well-known rule as to the proper relation between the through rate and the combination of locals.

It appears clearly to us that the complainant is endeavoring to measure the charge for a given service by the charges not applicable to the component parts of the same service, but by those applicable to a service which though between the same points is not the same. This is not within the letter or the spirit of the rule that a through rate should under ordinary circumstances not exceed the combination of local rates. In other words, unless the service is the same the locals can not constitute the measure of the through charge. The local charges which complainant seeks to have applied to these shipments do not cover the entire movement, but include services at the junction point, which no doubt result in a cost to the shipper greater than the through rate, or by making an actual reshipment at the junction point which would involve unloading, drayage, and reloading, and therefore the case presented does not disclose a typical through rate in excess of the combination of locals such as has been condemned in general terms by the Commission.

We therefore conclude that no case is presented in this record in which we may properly determine that the through less-than-carload rate from Johnstown to Winona on bar steel is unreasonable or otherwise unlawful. The complaint will be dismissed.

18 I. C. C. Rep.

No. 2899.

ZANG BREWING COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY  
ET AL.

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Submitted February 8, 1910. Decided May 3, 1910.

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1. Exaction of second class rate of \$1.45 per 100 pounds on wooden bungs, l. c. l., found to be unreasonable to the extent that it exceeded fourth class rate of 92 cents on articles of similar character and greater value. Reparation awarded.
2. Charge assessed on mixed-carload shipment of iron hoops, staves, headings, and one keg of staples, constituting beer kegs and hogsheads, knocked down, found to be unreasonable to the extent that it exceeded rate on beer kegs and hogsheads, set up. Reparation awarded.

*G. M. Stephen* for complainant.*G. H. Crosby* for Chicago, Burlington & Quincy Railroad Company.*James C. Jeffery, H. J. Campbell, and C. C. P. Rausch* for Missouri Pacific Railway Company.*James C. Jeffery* for Denver & Rio Grande Railroad Company.

## REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

This complaint, filed October 15, 1909, involves two classes of shipments, less-than-carload and carload, which moved from St. Louis, Mo., to Denver, Colo., over different routes. The shipments were included in one complaint and will be disposed of in one report.

The less-than-carload shipments were three in number, consisting of wooden bungs in barrels, and moved via the line of the defendant Chicago, Burlington & Quincy Railroad on November 16, 1907, May 4, and March 19, 1909. The aggregate weight of the shipments was 11,195 pounds, and freight charges thereon were \$162.33. Defendant collected the through second class rate of \$1.45 per 100 pounds, applicable, as shown by Western Classification, to wooden and fiber ware, including bungs, etc., in boxes, barrels, or crates. The complaint alleges that because articles similar in character take the fourth class rate of 92 cents per 100 pounds, the \$1.45 rate charged was unreasonable. Reparation is asked for the difference between the amount that was collected and the amount that would have been collected had the 92-cent rate applied, amounting to \$59.34.

Wooden ax or mop handles, wooden mop and broom handles (with or without heads) in boxes or crates; woods turned, in boxes; wooden wedges in boxes or crates, were, at the time shipments moved and are now, all classified fourth class in Western Classification. It was asserted by complainant that practically all these commodities are of greater value than wooden bungs, which are said to be worth at point of production about \$2 per thousand, and the contention is that because they are classified lower than wooden bungs the rate applicable to wooden bungs is unreasonable. This assertion was not refuted by the defendant.

At the hearing witness for complainant testified that wooden bungs are rated third class in the Official Classification and fourth class in the Southern Classification. An examination of the Official Classification shows the following articles to be classified third class:

Wooden bungs or plugs, in packages.

Wooden mop handles (with or without heads), in crates or boxes.

Wooden ax or broom handles, in bundles or boxes.

Wooden wedges, in packages.

Wooden potato mashers.

The Southern Classification shows the following ratings:

Wooden bungs, in packages, fourth class.

Wooden mop handles, with heads, in bundles, crates, or boxes, second class.

Wooden mop handles, without heads, in bundles, crates, or boxes, third class.

Wooden broom handles, in boxes, crates, or bundles, fourth class.

Wooden wedges, packed, fourth class.

Wooden potato mashers, third class.

It will be seen that the rating in Western Classification of wooden bungs as second class and wooden ax, mop, or broom handles, turned woods, and wooden wedges as fourth class is entirely at variance with the classification of such articles in both the Official and the Southern Classifications.

In view of all the circumstances of this case our conclusions are, and we so find, that the rate of \$1.45 per 100 pounds charged on these shipments of wooden bungs was unjust and unreasonable in and to the extent that it exceeded a rate of 92 cents per 100 pounds; that complainant is entitled to reparation from the defendant Chicago, Burlington & Quincy Railroad Company in the sum of \$59.34, with interest from May 17, 1909, and that the defendant should establish and maintain for the future a less-than-carload rate on wooden bungs, not to exceed the rate contemporaneously in force on wooden mop, ax, and broom handles, and wooden wedges.

The carload shipment in question was a mixed carload of iron hoops, staves, headings, and one keg of staples which moved via the lines of defendants Missouri Pacific and Denver & Rio Grande on December 25, 1907. The actual weight of the shipment was 38,458 pounds.

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Charges were assessed on a weight of 30,000 pounds and rate of 72 cents per 100 pounds for the hoops; a weight of 30,000 pounds and a rate of 32.5 cents for the staves and headings; and a weight of 108 pounds and a rate of 92 cents for the keg of staples, making an aggregate charge of \$314.50.

It is alleged by complainant that the rates collected were unreasonable and unjust in and to the extent that they exceeded 48.5 cents per 100 pounds on the actual weight. The record shows that the shipment was in reality beer kegs and hogsheads knocked down, including all the parts going to make complete a certain number of kegs and hogsheads.

Item 13, page 33, of the Western Classification, No. 43, provides for beer kegs or barrels, set up, Class D. The Class D rate from St. Louis to Denver is 48½ cents. Rule 26 of the Western Classification provides as follows:

Where the classification provides separate ratings for articles set up and knocked down the charges on any article shipped knocked down should not exceed what would accrue on the same article when shipped set up.

It seems to be the contention of defendants that no evidence was offered that the shipment was beer kegs and hogsheads knocked down. It was alleged in the complaint that the shipments were of that character and it was so stated by witnesses for complainant and the statements so far as appears in the record were not rebutted.

The defendants further contend that unless the classification provides separate ratings for articles set up and knocked down, the rule is not applicable. The answer to that is that if articles set up and knocked down should take the same rates, and they generally do, the rule in the classification is unreasonable. The minimum applicable to shipments of beer kegs set up is 20,000 pounds, to hogsheads set up 130 pounds each, in any quantity, and to staves and headings and wooden hoops, 30,000 pounds. This shipment constituted beer kegs and hogsheads knocked down, and we know of no reason why they should take a higher rate than the same articles set up. No reason was given at the hearing for a difference in the rates.

Taking into consideration the facts and circumstances with respect to the transportation in question, we are of the opinion and so find, that the charge collected by defendants was unreasonable in and to the extent that it exceeded 48½ cents on the actual weight, and that complainant is entitled to reparation in the sum of \$127.98, with interest from January 25, 1908. Defendants will be required to establish and maintain a rate for the future on wooden beer kegs or hogsheads knocked down not to exceed the rate on the same articles set up.

An order will be entered in accordance with these findings.

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No. 2089.

ANDERSON, CLAYTON &amp; COMPANY ET AL.

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY  
ET AL.

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*Submitted January 6, 1910. Decided May 3, 1910.*

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The complaint alleges that the Traders' Compress Company imposes certain charges for applying owners' or shippers' patches to cotton bales in their compression and for storage on cotton remaining in the compress at concentration points after the expiration of fifteen days, and that every service performed in connection with the cotton from the point of origin to destination, including the services so charged for by the compress company, are included in the through rate, and an obligation rests upon the carriers to protect the owners or shippers against such charges; *Held*, That the facts shown do not justify any order against defendant carriers; that the carriers have the right to compress cotton in transit; that they have the right to grant or allow shippers or owners the privilege of concentrating uncompresses cotton at designated compresses on their lines for such treatment as such shippers or owners may desire to give, with the right of such shippers or owners to deliver the cotton back to the carriers for transportation to interstate or foreign destinations at the through rate from points of origin.

*S. H. Cowan* for complainants.

*E. B. Peirce* and *M. L. Bell* for Rock Island lines.

*Robert Dunlap, T. J. Norton, and A. A. Hurd* for Atchison, Topeka & Santa Fe Railway Company.

*C. Haile* for Missouri, Kansas & Texas Railway Company.

*C. N. Burch* for Illinois Central Railroad Company and Yazoo & Mississippi Valley Railroad Company.

#### REPORT OF THE COMMISSION.

*COCKRELL, Commissioner:*

The complainants are Anderson, Clayton & Company, a partnership; Harris-Irby Cotton Company, a corporation, with their principal offices at Oklahoma City, Okla., and Herman Loeb, of Shreveport, La., all engaged in buying, selling, and shipping cotton, and the defendants are practically all railroad companies operating in and through Oklahoma and their principal connections.

The complaint leaves some uncertainty as to the exact relief sought. That no mistake may be made in regard thereto the statements of the complainants, through their attorney, will be quoted.

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At the hearing their attorney said:

The complaint is mainly directed—in whole directed—at two particular practices complained of. One is the fact that the Traders' Compress Company at different places on the Rock Island and other lines began about the 1st of January to charge a cent per bale per day for cotton remaining on compress platforms at concentrating points after the lapse of fifteen days from date of arrival, and after such period a charge of one-half cent per bale per day; and also to the practice of the compress company in charging 3 cents per bale for applying owners' patches to the cotton baling in process of compression.

The complainants, in their brief, state that—

The fact involved is whether the railroad companies must publish in their tariffs the charge which a compress company makes to the shipper of cotton for the detention of the cotton on the platform of the compress company beyond a certain time limit, where the universal custom has been that the shipper paid the through rate only, for which all service and facilities were supplied.

The complainants contend that every service performed in connection with the cotton from the time it leaves the point of origin until it reaches its destination, including the leaving of the cotton upon the platform of the compress company and including whatever expense the railway company might be put to, was imposed in the through rate, and that if the compress company saw fit to make a charge of the sort in question it was nevertheless an obligation of the railway company for the compensation contained in the through rate to protect the shipper against any such charge; and that the question as to whether such charge should be paid or not should be between the railway company and the compress company.

The defendant carriers on whose lines the shipments in controversy originate, in their answers, deny all the material statements in the complaint; deny that the compress companies are their agents, or that the Traders' Compress Company is their agent, or that they have anything whatever to do with the patching or with anything else done in the handling of the cotton save its transportation and compression in transit, for which their charges are specified in their tariffs and their rules and regulations governing the same; and that the charges for patches and for storage complained of are made by the compress company and not by any authority or direction of the defendants, and are matters for adjustment between the shippers and the compress companies, and that they have never assumed any liability for storage in warehouses or on the platforms of the compress companies, or for applying patches; and that storage of cotton on the compress platforms or warehouses at the concentration point until sold or disposed of by the owner is not a transportation service; and that the 10 cents included in the through rate is solely for the service of compression, the only service in which they are concerned, and is uniform, reasonable, and nondiscriminatory.

The evidence submitted came largely from one of the complainants, Mr. Benjamin Clayton, and from Mr. B. L. Anderson, secretary  
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of the Traders' Compress Company. Mr. Clayton, who was the only witness on behalf of the complainants, testified—

That at the beginning of each season the railroad companies outline certain districts to be served by each compress on their lines, and they name this compress in some cases as the exclusive compress at which cotton from that district may be concentrated; in other cases they give the shipper the option of shipping to two different compresses for the purpose of concentration. Then the rules have to be followed to the letter to obtain the refund of concentration charges into the compress points. A bill of lading reading from the point of origin to the compress station is given. The freight rate of \$1.50 per bale into the compress point is uniform and without regard to the local rate or distance.

When the shipment reaches the compress the railway company makes delivery of it to the compress. We get a receipt from the compress through the railroad agent as evidence of the fact that the railroad company has delivered to the compress the cotton. When the cotton is placed on the platform of the compress it is first sampled and weighed. The compress company performs those tasks. They do that for the shipper, the owner. So that we know just the number of bales, the grade, and weight of the cotton at the compress. We do not know the grade until it goes into the compress. After we get from the compress the weights and the grades we are in a position to begin to sell it to somebody and we try to sell it either by exhibiting the samples or upon description. When we sell this cotton the evidence that we give the buyer is simply an exchange of cables. We attend to the necessary instructions as to the shipping. These instructions simply direct the compress company to ship over a certain road a certain number of bales of cotton. The compress company issues a binder (an obligation of the compress company to deliver the number of bales called for by it to the railroad company) to be delivered to the railroad company, on which we get the railroad bill of lading to destination. The cotton is subsequently delivered to the railroad company by the compress. From the time that the cotton is delivered to the compress and we get the compress receipt for it until we get a binder from the compress company the insurance on the cotton is covered by our blanket insurance; we assume the responsibility for the safety of the cotton during that time. We consider that it is our cotton to sell and to insure and to make any disposition that we may want to. During that time the railroad company has nothing to do with the cotton whatever. It can not direct the shipment of it; it is there subject to our exclusive orders. The cotton is not compressed until it is ready to be loaded into the cars. Patches are put on in the process of compression. They can only be applied when the bands are off, and these are only off during the compression. They patch the cotton with a smooth patch in order to afford a smooth marking surface so that the cotton can be easily identified. If the cotton is shipped without patches the marking surface will be very rough and torn and you can not identify the cotton by the time it gets to Galveston to save your life. It is made of bagging that has not been exposed to the elements. The bagging that goes into the compress on a bale of cotton has been cut and torn and otherwise misused until you can hardly make a mark on it.

The charges complained of in this case begin fifteen days after the cotton is unloaded and are assessed when the cotton is shipped out. The compress company does not make any charge for storing this cotton after the railroad company issues its bill of lading.

I pay about 2½ cents a pound for patches; a patch weighs 3 pounds; total cost, 7½ cents. We add that in our outbound invoice. We sell the patches for 30 cents.

None of these railroads ever made any demand on my company to pay these charges. They have never said to me that they would authorize these charges. They have

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never assumed any responsibility for them other than refusing to relieve us when we ask them for relief. The railroad company does not force us to put patches on the cotton.

We have kept odds and ends of cotton there as long as three or four months, but the majority of our cotton moves in and out in a week's time. In that case there is no charge by the compress. We have been required by the railroad company to reship cotton arriving at the compress prior to August 31 before October 31, with the exception of the Santa Fe. If it is delivered after the 31st of August it takes in a new season and may remain until October 31 of the following year. I believe that a regulation in the railroad tariffs limiting the life of an expense bill would be a reasonable rule. I mean by that the shipper would be allowed to retain his cotton in the concentrating point for sixty days and after that time the expense bill would either die and be of no use in reshipping his concentrated cotton or otherwise there would be a penalty on it after sixty days. You can get storage at points like Galveston and Houston at 10 cents per bale per month under a covered platform. Ten cents per bale per month would be the outside limit to charge after sixty days' free time.

Until about thirty days ago Anderson, Clayton & Company was a stockholder in the Traders Compress Company since its organization. The Traders Compress Company, as an organization, ships no cotton. They are charging the railroad for compression and the shipping public for storage.

There is one compress in Oklahoma charging demurrage or storage. It is the compress at Weleetka. The Shawnee compress does not charge for storage. It charges for sampling and weighing cotton 10 cents a bale. That is a service in addition to the freight rate, which we pay directly to the compress company. The service we get is hardly one you would consider the railroad company would be expected to perform.

At South McAlester, when we did business there a year or more ago, I think there was a charge of 10 cents a bale.

In Arkansas there is a charge for handling and storage. It is optional with the man that owns the plant. He can either collect it or waive it as he chooses.

In case we are going to ship our cotton to Japan, there has to be an extra grade of compression. We are put to extra pains and have to pay the compress company to do that. We never ask the railroad company to pay that.

From the shippers' standpoint cotton is concentrated for the purpose of assembling the even running lots of equal value and of the same grade, and for the further purpose of affording a means of protection from the elements and from stealing while the cotton is waiting for market. Compression is for the purpose of reducing its size and bringing it to greater density so that a greater number of pounds can be loaded in a given space, and also because the steamship lines require cotton to be compressed before loading it for European destinations. It has to be compressed somewhere.

Storage at the compress benefits us by allowing us a great many privileges that are necessary in the conduct of the cotton business. It keeps us from owning a warehouse of our own.

When we buy 100 bales of cotton we have not the least idea what the grade is. It can not be denied that concentration is a benefit to the shipper. The custom of the trade is such that it would be next to impossible to handle cotton through the port of Galveston if it were not concentrated in the interior. The method of shipping cotton is due to trade conditions, not to the railroads. I do not believe it could be handled at all without concentration.

Another reason for concentration is that at the time the cotton comes into sight the consuming markets of the world might be dull for sales and you can not afford to allow that cotton to lie on the ground at your local station there. It would rot; it would be stolen; and it must be carried to some point where it can have protection.

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It benefits the carrier in that it permits the assembling of even-running lots of the same grade. I will have to explain to you that a shipment of cotton originating at a noncompress point is made up of five different grades, with say 100 bales of cotton, and these grades are all properly suited to the commercial needs of five different markets, and it must be brought into the compress and sold in even-running lots of the same grade. That cotton goes out to the port, 50 bales in each car of the same grade, and consigned to the same port in Europe; whereas, if taken up indiscriminately at the noncompress points and shipped to ten or fifteen different markets, consigned, through to Europe, to be compressed in transit, it would arrive at Galveston in mixed cars, none of which could be shipped to the steamship pier without first having been rehandled. That was the experience in 1906 and 1907 at Galveston, the worst blockade ever known, and it was brought about by that very thing.

Mr. Anderson, secretary of the Traders' Compress Company, testified:

I prepared the rules recently issued by that company assessing the charges complained of. They were issued for the compress company. Neither the Rock Island Railroad nor the Frisco Railroad had anything whatever to do with it. I was not acting by their advice; I did not consult them about it. I did not consider that the railroads had anything to do with it. They do not get any part of the charge. They had no direction, suggestion, or voice in making it. I have not given them any part of it, and I do not expect to divide it up with the Rock Island, Frisco, or any other railroad. The charge would not have been imposed if congestion had not existed. It was an emergency that we had to meet. The peculiar fact of it is that during the month of December it seems that there was no demand practically from the spinners of cotton, and as a result the interior seemed to keep on buying and piling cotton up on our presses. We pleaded with the owners of that cotton by letter and telegram and telephone, asking them to give us relief. The railroads were urging us to release their equipment. We felt that something must be done. We could not afford to continue it. We had a good deal of cotton scattered over the ground that we did not have platform room for. We had a great deal of space occupied by patches; for instance, I remember the superintendent at Chickasha said that he unloaded 30 cars of bagging in one day for shippers, and that takes up room. It takes up room under the shed that is very necessary in a big season for blocking in cotton for compression to avoid compressing them wet.

The rules referred to were contained in the following notice, issued December 23, 1908:

NOTICE: TO ALL CONCERNED: DEMURRAGE.

Concentrated cotton now on hand covered by our tickets dated prior to December 16, 1908, that if not shipped on or before December 31, 1908, will be subject to a demurrage charge of 1 cent per bale per day, or fraction thereof, for the first fifteen days after December 31, 1908, and thereafter a half cent per bale per day, or fraction thereof, until shipped.

Concentrated cotton covered by our tickets, dated on or subsequent to December 16, 1908, will be allowed fifteen days' free time from date of tickets and then subject to a demurrage charge of 1 cent per bale per day, or fraction thereof, for the first fifteen days, and a half cent per bale per day, or fraction thereof, until shipped.

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## HANDLING PATCHES.

Effective January 1, 1909, a charge of 3 cents per bale on cotton will be made for handling patches furnished by owner.

The witness further testified:

On the first of January, that is, after the notice of the charges had been sent out at the Altus press, which has a capacity of 5,200 bales of flat cotton, there were 7,197 bales and 9 cars waiting to be unloaded. At the Chickasha press, where the capacity is 9,235 bales theoretically, there was a stock of 12,346 bales and 148 cars to be unloaded in the yards. At the El Reno press the conditions were fairly normal. At the Guthrie press, which has a capacity theoretically of 5,898 bales, there were 10,444 bales on hand and cars in the yard to be unloaded. At Hobart, where the capacity is 8,633 bales theoretically, there was a stock of 8,729 bales and 28 cars in the yards to be unloaded. I will say that if we had not imposed these demurrage charges this year I do not think we would have made any money this year.

Concentration is a custom among shippers of assembling their purchases at various noncompress points at a compress point for the purpose of making up 50 and 100 bale lots even running lots. I have always understood that the privilege of concentration was accorded the shippers as a benefit to the shippers, whereas the railroad may possibly secure some benefit by reason of it. I have always felt that the railroad company was doing something that they didn't have to do when they permitted concentration. Concentration is not such an old arrangement. I should say about eighteen years ago there was no such thing as concentration.

I think the shipper is benefited by the privilege of concentration to the extent that he can buy cotton at all points tributary to a compress, over the telephone, and ship it into that compress point, assemble it there, and sit in his office in another point and receive samples, weights, and tickets, without any operating expense to speak of.

I imagine the railroads fix those concentration districts for the purpose of minimizing their back hauls and reducing their long hauls, on the theory that cotton originating in the territory of one compress can well be taken care of by that compress.

I think the concentration privilege has a great deal to do with the congestions that exist. If a man is permitted to concentrate his cotton and not compelled to ship it out congestion naturally results. If the shipper had to ship it right in and ship it right out in order to get the benefit of the through rate from the point of origin the possibility of congestion would be materially minimized.

The rate for compression in Texas, Oklahoma, and Arkansas is 10 cents per 100 pounds. Fifteen years ago there was more cotton per compress than there is now in the west. The profits then were much better than they are now. The only charge we make for the service is for holding the cotton over fifteen days, and handling the shippers' patches, except when he has his cotton reweighed or resampled. We make no charge for first weight or first sampling, but we are frequently called on to furnish second or subsequent weights, and second or subsequent samples, and we make a nominal charge for those services; but aside from that this demurrage and handling of patches are the only charges we make, and they were inaugurated the past season. Our endeavor in arriving at those charges was to make a charge that was fair and reasonable for the services rendered and the facilities furnished, and we treat all our customers alike in that respect.

I have always considered that concentration was an advantage to the railroads, to a certain extent, and a great privilege to the shippers. Up to the time the railroad company delivers the cotton to us for account of the consignee until the outbound bill of lading comes back to us for our O. K., accompanied by our ticket, I have never thought the railroad company had anything to do with the cotton. As a matter of fact, the com-

press receipts go to the shipper and have to be put in his bank as collateral; he provides the insurance in his own behalf to protect the cotton against fire; he orders us to sample it, weigh it, and to perform other services, and inasmuch as those orders come from the shipper, I have never thought that the railroad company had any jurisdiction whatever over the cotton. The railroad contracts we have do not relate to any of the cotton that is between those periods—between delivery to the compress and signing of the outbound bill of lading. That interim may mean one day or thirty days, or six months.

As I understand it, compression is performed only for the railroad, for the purpose of densifying cotton in order to reduce the number of cars it takes to transport it. That is what I understand compression to be.

Concentration is a custom among shippers of assembling their purchases at various noncompress points at a compress point for the purpose of making up 50 and 100 bale lots, even running lots; that generally cotton is sold for delivery in 50 and 100 bale lots, or multiples of 50. That is what the mill expects to receive, and in order to enable the shipper to comply with the terms of the sale, he needs the privilege of concentration. However, there are some shippers who do not concentrate cotton in this country. They concentrate in Liverpool or Bremen or Havre. In those instances it is not necessary to make deliveries in even running lots. It goes to the press as transit cotton; but there is other transit cotton. There is cotton that originates at the flat points, out of which the shipper can get a sufficient number of bales to make up a final mark, and when he does that he takes out a through bill of lading. In this transit cotton we have repeatedly refused to recognize either consignor or consignee. It comes to us on through billing, and we unload it for the railroad company, compress it for the railroad company, and load it back for the railroad company without any reference whatever to who may appear as consignor or consignee. We have refused to sample that kind of cotton without the railroad's permission; we sometimes weigh it. That cotton naturally comes in and goes right out.

No storage charge is made on transit cotton. The charges are only made on concentration cotton after a lapse of fifteen days.

To a compress transit cotton is worth a great deal more than concentrated cotton, because it comes in and goes right out; very limited facilities necessary to handle it and there is no delay. There are no large stocks of cotton to work around. The Traders Compress Companies are not on the right of way of the Chicago, Rock Island & Pacific or of Frisco.

The foregoing statements taken from the complaint, the answers, the testimony, the briefs, and the arguments on the part of the complainants give substantially all the facts in this case. There is no controversy as to the rates charged by any of the initial carriers either for their transportation services or for the mere compression services. The complaint is against the 3-cent charge for putting on the patches and the storage charge of one cent per day for the first fifteen days after fifteen days' free storage after date of receipt, and one-half cent per day thereafter, for allowing the cotton to remain in the compress at the concentration point. No contracts between the carriers and the compress companies in Oklahoma have been filed with the Commission. There are 19 compress companies in Oklahoma. Of these, 12 are reached by the St. Louis & San Francisco Railroad Company, 9 by the Chicago, Rock Island & Pacific, 6 by the Missouri, Kansas

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& Texas, 5 by the Atchison, Topeka & Santa Fe, 2 by the Fort Smith & Western Railway, and 2 by the El Reno & Western Railway. One compress is reached by 5 carriers, 2 are reached by 4 carriers, 4 are reached by 3 carriers, 9 by 2 carriers, and 3 by 1 carrier. The defendant originating carriers in Oklahoma have substantially the same tariff provisions in regard to shipments of cotton, compression, and concentration. By their tariffs they impose substantially the same rates to the same destinations on cotton. Rates include option of compression in transit, and the uniform charge of 10 cents per 100 pounds for such compression. They provide that—

Cotton delivered to carriers in compressed form, either round or square bales, and the compress charges have been paid by the owner, the rate thereon will be 10 cents per 100 pounds less than the published rate on cotton with carriers' option of compression.

#### COMPRESSION IN TRANSIT OR TRANSIT COTTON.

Transit cotton is defined to mean "cotton moving under through bills of lading, compressed at an intermediate point."

Under such tariffs any shipper of cotton desiring to ship uncompressed cotton to any interstate or foreign point can deliver such cotton to the carrier, which gives him a through bill of lading from origin to destination, reserving its right to compress in transit, the charge therefor being included in the through rate. The shipper simply pays the through rate and receives a through bill of lading. Such cotton is continuously in the control and custody of the carrier from receipt to destination and no storage charge is involved or accrues.

#### CONCENTRATION AND COMPRESSION IN TRANSIT.

The carriers in their tariffs designate the compresses on their respective lines where uncompressed cotton can be concentrated or assembled from stations in a designated territory for marketing privileges, such as weighing, sampling, grading, and assorting, and thereafter reshipped to interstate destinations with the benefit of the through rate including compression charge from origin to final destination. On such cotton they impose a uniform rate of 30 cents per 100 pounds or \$1.50 per bale from the origin to the concentrating point, regardless of the distance. The carriers by their tariffs require the station "agents in signing bills of lading for such cotton, to note on their face 'for shipment to interstate destination.'"

They further provide that there shall be no compress in operation at origin or at any point between origin and concentration, the compress station to be in the direction of final destination. Charges for concentration shall be made at the regular tariff rates except where special rates are shown and shall be collected in full at the time



of delivery of such cotton at points of concentration; the railroad company which performs the service of concentration shall adjust the charges for such service by refunding the amount prescribed, only after receiving the concentrated cotton for shipment to final destination. Expense bills tendered by shippers in the adjustment of charges for concentration must in all cases bear dates prior to those of shipment to final destination of the cotton they are intended to represent.

Provision is made in case of the closing of a compress, breaking of machinery at the compress, or congestion of facilities either of the compress or of the railroad company, that cotton in transit to concentration point or having arrived at concentration point may be diverted to other and more available points on the line not subject to the disabilities above mentioned, upon the authority of the operating department of the company.

Under no circumstances will cotton be permitted to be placed on company's platform or right of way until shippers are ready to give shipping instructions and take out bills of lading. The bills of lading must show all shipper's marks and each bale of cotton must be marked in ink by the shipper in a plain and durable manner with such distinctive marks as he may use; also, if practicable, the full name and address of the consignee. Cotton marked with tags will not be accepted for shipment. Agents at stations will require the surrender of bills of lading covering all cotton delivered at or billed to their stations.

In outbound shipments of same crop. Freight bills for the services of concentration tendered in the adjustment of charges when shipment is forwarded from point of concentration to final destination to be for cotton of the same crop as that forwarded to final destination. Freight bills for shipments concentrated prior to August 1 shall not be available in adjustment of charges when shipments are forwarded from point of concentration to final destination after August 31.

Any shipper of uncompressed cotton desiring to have his cotton assembled, sampled, graded, and assorted before designating its final interstate destination can ship such cotton at a flat rate on an ordinary local bill of lading to the designated concentration point. On arrival there the carrier delivers the same to the compress company, takes the compress company's receipt for the same, and delivers such receipt to the shipper and takes up its bill of lading and has no further control or authority over the cotton until offered for shipment out. Such shipper, when ready to ship out, can give his instructions to the compress company, take its binder and present the same to the carrier and receive a through bill of lading at the through rate from point of origin. The carrier then has the compress company to compress the cotton, pays 10 cents per 100 pounds for such compression, and transports the cotton to destination.

Such cotton moves under two separate bills of lading, one from the point of origin to the concentration compress, and the other from such compress to interstate or foreign destination.

The storage charge complained of occurs wholly during the period between the time when the carrier delivers the cotton to the compress

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company, takes its receipt and delivers it to the shipper, and takes up bill of lading, and the time when the shipper delivers to the same carrier the binder of the compress company with instructions for outward shipment. During this period, in the language of complainant's only witness, "the railroad company has nothing to do with the cotton whatever. It can not direct the shipment of it; it is there subject to the shipper's exclusive order," and no storage charge accrues or is made after the binder has been delivered to the carrier with instructions for such shipment. The storage charge is specifically confined to concentration cotton and only applies during the time the railroad company has no control or authority over the cotton and the shipper has the exclusive control. The right of the carrier, reserved in its tariff, to compress such cotton is not exercised and no compression is made until after the shipper has done whatever he desired to do to such uncompressed cotton at the concentration point and has delivered to the carrier the binder of the compress company.

There is no statement and no evidence presented that any of the compresses in Oklahoma are owned by the carriers. The compress companies in Oklahoma, prior to December 23, 1908, had allowed concentrated cotton to remain at the compress for certain lengths of time, in some cases exceeding a year. The carriers, in their tariffs, simply provided that the freight bills on concentrated cotton to the compress can only be received in the outward shipments of such cotton of the same year's crop and freight bills for shipments of cotton concentrated prior to August 1 shall not be available in the adjustment of charges on outward shipments from concentration point after August 31.

There is no evidence that any of the carriers directed, authorized, or required the Traders' Compress Company to issue the notice limiting the free storage to fifteen days and making charges thereafter, and the charge of 3 cents for handling the patches.

Complainant's only witness stated that—

the shipper should be allowed to retain his cotton at the concentrating point for sixty days and after that the expense bill to be of no use for outward shipment, or a penalty on it after sixty days.

The patch is simply putting on the bale the marking required by the carrier in the tariff in these words:

Each bale of cotton must be marked, in ink by the shipper, in a plain and durable manner, with such distinctive marks as he may use, also, if practicable, the full name and address of the consignee,

which seems to be a reasonable requirement.

The law is very explicit in regard to the duty of carriers, and declares, "That the term 'transportation' shall include cars and

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other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported," and also requires that "every common carrier shall file with the Commission \* \* \* schedules showing all the rates, fares, and charges for transportation" \* \* \* and that "the schedules \* \* \* shall plainly state the places between which property and passengers will be carried, \* \* \* and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed, and any rules and regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee."

Whatever charges are made, whatever services are performed, and whatever privileges are allowed by the carriers must be stated separately.

The carriers have the right to compress the cotton in transit. They also have the right to grant or allow to shippers or owners of cotton the privilege to concentrate uncompressed cotton at designated compresses on their lines for such treatment as such shippers or owners may desire to give it, with the right of such shippers or owners to deliver such cotton back to the carriers for transportation to interstate or foreign destination at the through rates from point of origin. Whatever charges are made must be just, reasonable, and nondiscriminatory. They may not pay to compress companies any unjust or unreasonable charge. The compress companies are also amenable to control by the laws of the land. They are performing a public service, a service for the public, and for such services they may only charge just and reasonable rates.

As said by this Commission, in *Commercial & Industrial Asso. of Union Springs v. Central of Georgia Ry. Co.*, 12 I. C. C. Rep., 375:

Compression is to secure greater density of the cotton as freight for the sole purpose of more economical loading and transportation, and it was first done at ports under encouragement of carriers by water, lower rates being offered on compressed than on uncompressed cotton. The carriers by rail then found it to their interest to permit compression at interior points, not only for the same economical reason, but also to enable them to offer the freight in more acceptable form to the water lines. \* \* \* Rates allowed by the carriers for such compression in the state of Alabama are 8½ cents for shipment to northern and foreign destinations, and 7½ cents on shipments to southern mills. In Georgia the rates for compression are 7½ cents on foreign and northern shipments and 6 cents to southern mills.

Our conclusions are that the facts in this case do not justify the Commission in making any order against the defendant carriers, and the complaint will be dismissed.

It is not deemed amiss to call the attention of cotton growers and shippers and the railroads to the fact that cotton bales from the United States shipped to Europe are received in worse condition as to packing than cotton bales arriving there from any other country. In a published report of the Chief of Bureau of Manufactures to the Secretary of Commerce and Labor, dated September 19, 1909, there is an address by a special agent sent by the Secretary to a meeting of the General Managers' Association of the Southeast at Atlanta, in which he quotes from a Scotch paper the following:

It is worthy of note that English and continental buyers are making bitter outcry over the disagreeably ragged condition in which bales of American cotton arrive at their destination. From Egypt cotton bales arrive in this country in good and safely packed condition, but the cotton bales from the United States in mere rags of wrappers, with the result that serious loss is inflicted on British buyers.

He then adds:

This account goes on to tell of two steamers at the Port of Manchester, one from the United States and one from Egypt, which were discharging at the same quay. Out of the hold of the American vessel came a constant succession of what could only by courtesy be described as bales. They looked more like dilapidated rag bags. In spite of the most careful handling they shed part of their contents at every movement, and it was obvious that never at any time had the majority of the bales been properly covered. Out of the vessel from Egypt came bales perfectly rectangular, neat and trim, clearly marked, and with hardly a lock of cotton visible anywhere.

I might think this censure exaggerated if I had not seen cotton unloaded at Liverpool and Bremen from vessels from the United States, South America, and Africa. Always the bales which were in the worst condition and whose contents were most damaged and most subject to loss were from the United States.

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*Submitted April 10, 1910. Decided May 2, 1910.*

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Defendants' rate on bottle caps from Baltimore, Md., to Denver, Colo., under the facts disclosed by the record, not found to be unreasonable. Reparation denied.

*Adolph Coors and G. M. Stephen* for complainant.

*F. C. Dillard and Dorsey & Hodges* for Southern Pacific Lines.

*E. E. Whitted and J. M. Cates* for Colorado & Southern Railway Company and Fort Worth & Denver City Railway Company.

*M. L. Bell and A. B. Enoch* for Trinity & Brazos Valley Railroad Company.

#### REPORT OF THE COMMISSION.

*KNAPP, Chairman:*

October 20, 1907, complainant shipped over the lines of the defendants from Baltimore, Md., to Denver, Colo., a mixed carload of bottle caps and one box of hardware. The bottle caps weighed 30,400 pounds and the hardware 100 pounds. There was collected a through commodity rate of \$1.87 per 100 pounds on the bottle caps and \$1.55 per 100 pounds on the hardware. No complaint is made of the rate on the hardware.

It is alleged by complainant that the charge collected on the shipment of bottle caps was unreasonable for the reason that similar articles and articles of greater value are classified fourth class in Western Classification and the fourth class rate is \$1.16 per 100 pounds. Reparation for the difference between the amount which was charged and \$1.16 is asked. This claim was brought to the attention of the Commission informally June 30, 1909.

The traffic in question moved from Baltimore to New York by rail and from New York to Galveston, Tex., by water, and thence by rail to Denver. For many years prior to 1907 complainant shipped

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bottle caps from Baltimore in less-than-carload lots over the lines of these defendants and paid the first class rate of \$2.33 per 100 pounds. Complainant was induced shortly before the shipment in question was made by representatives of defendants to buy and ship bottle caps in carload lots and a commodity rate of \$1.87 was provided therefor. No carload rating was published in the tariffs of these defendants on the commodity in question prior to the time of the publication of the commodity rate referred to.

Complainant asserts that because Western Classification places "tin disks used to make caps to cover tops of beer bottles or can caps in packages" in fourth class, the commodity rate named by these defendants is unreasonable. It is also contended that because analogous articles of greater value, such as stamped tinware and can tops, etc., take lower rates in Western Classification and also lower rates in Official Classification, the rate in question is unreasonable.

No evidence was submitted as to the conditions of transportation with respect to articles with which comparison is sought to be made. The volume of the traffic does not appear. It does appear that complainant ships one carload of bottle caps from Baltimore to Denver per year.

The bottle caps involved are circular pieces of tin stamped by machinery into the shape of a cap to fit over the mouth of a beer bottle. They are fitted inside with a thin cork or fiber disk from one-sixth to one-eighth of an inch thick. The cap is about  $1\frac{1}{4}$  inches in diameter outside measure. The plain tin disk which takes a lower rate is the raw material used to make a bottle cap. No competition was shown with articles taking a lower rate. Under these circumstances we are not able to find that the \$1.87 rate charged on this traffic was unlawful and the claim for reparation must be denied.

November 1, 1909, the commodity in question was included in third class in Western Classification, making the all-rail rate from seaboard territory to Denver \$1.48 per 100 pounds. Rates of the rail-and-water lines from seaboard territory to Denver are made on a differential basis below the rail rates. The change in the classification just noted caused a reduction in the rate over the route the traffic in question moved to \$1.30 per 100 pounds. The voluntary reduction of a rate does not of itself establish that the preexisting rate was unreasonable or otherwise unlawful, and in this case does not afford a sufficient basis for an award of reparation.

The complaint will be dismissed.

No. 3075.

C. A. LAMMERS BOTTLING COMPANY

v.

BALTIMORE &amp; OHIO RAILROAD COMPANY ET AL.

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*Submitted March 8, 1910. Decided May 2, 1910.*

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For reasons given in the *Coors case*, *ante*, p. 352, complaint herein dismissed.

*J. E. Keith* for complainant.

*E. E. Whitted* and *J. M. Cates* for Colorado & Southern Railway Company and Fort Worth & Denver City Railway Company.

*F. C. Dillard* and *Dorsey & Hodges* for Southern Pacific Lines.

*M. L. Bell* and *A. B. Enoch* for Chicago, Rock Island & Pacific Railway Company, St. Louis & San Francisco Railroad Company, and Trinity & Brazos Valley Railroad Company.

## REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

January 25, 1908, and August 19, 1909, respectively, complainant shipped over the lines of the defendants from Baltimore, Md., to Denver, Colo., a carload of bottle caps. The shipments weighed in the aggregate 47,800 pounds, and defendants charged the published commodity through rate of \$1.87 per 100 pounds. It is alleged by complainant that the charge collected was unreasonable for the reason that similar articles of greater value are classified fourth class in Western Classification and the fourth class rate is \$1.16. Reparation for the difference between the rate charged and \$1.16 is asked.

This case is similar in all essential particulars to the case of *Coors v. Southern Pacific Co.*, *ante*, p. 352. It was stipulated in this proceeding that the evidence in the *Coors case* should be considered, so far as applicable, as evidence in this case. In the *Coors case* it was held that the record did not show that the rate of \$1.87 was unlawful, and reparation was denied. For reasons given in that case the complaint herein will be dismissed.

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No. 2863.

CHARLES R. LULL &amp; COMPANY

v.

MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY  
COMPANY.

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*Submitted February 18, 1910. Decided May 2, 1910.*

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Complainant shipped bran from Minneapolis, Minn., to Amherst, Wis., which on arrival consignee refused to accept. Complainant instructed defendant to transport shipment back to Marshfield, Wis., which was done and charges made for each haul. Upon complaint that charge for only one haul should be made; *Held*, That the transportation from Amherst to Marshfield was a back haul and did not come within the reconsignment privilege named in defendant's tariff. Complaint dismissed.

*George A. Schroeder* for complainant.*Alfred H. Bright* for defendant.

## REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

On November 3, 1908, complainant shipped a carload of bran weighing 40,000 pounds from Minneapolis, Minn., to Amherst, Wis., and upon its arrival at that point the consignee refused to accept same. The complainant then instructed defendant by letter as follows:

Will you kindly order this car forwarded on original bill to our order at Marshfield, Wis. Notify H. Ebbe & Co.

Accordingly the car was rebilled by the defendant and sent from Amherst to Marshfield.

The rates on bran from Minneapolis to Marshfield, Amherst, Milwaukee, Wis., Chicago, Ill., and a great many other points is 10 cents per 100 pounds. For the movement from Minneapolis to Amherst the defendant assessed a rate of 10 cents per 100 pounds, or \$40, and for the movement from Amherst to Marshfield an additional charge of 10 cents per 100 pounds was made, plus a charge of \$2 for switching, or a total charge amounting to \$82 was collected upon the arrival of the

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car at Marshfield. The complainant contends that the charge of \$40 for the movement from Amherst to Marshfield should not have been imposed; that the original charge for the transportation from Minneapolis to Amherst should have covered the movement between these points. Reparation in the sum of \$40 is asked.

A reconsigning privilege provided for in the tariff under which this shipment moved is as follows:

Carload freight of all kinds, except when otherwise provided for by tariff, may be reconsigned before arrival at destination to a point beyond on the direct line (Eau Claire, Wis., and Menasha, Wis., being considered as on direct line), without additional charge. After arrival at destination and when no change has been made in original contents of car, same may be reconsigned before delivery to a point on the direct line (Eau Claire, Wis., and Menasha, Wis., being considered as on direct line), at an additional charge of \$2 per car above current tariff rate from point of origin to final destination, subject to regular car service, switching and storage charges. One reconsignment only will be allowed.

The transportation of the car from Amherst to Marshfield was a back haul of 48 miles, and this movement does not therefore come within the reconsigning privilege above quoted. The charges collected were in accordance with the tariffs of the defendant and there is nothing in this record to show that they are unreasonable, or otherwise unlawful. The defendant is entitled to payment for its transportation from Amherst to Marshfield, and as that charge is not found to be unreasonable the complaint will be dismissed.

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No. 3008.

GAMBLE ROBINSON COMMISSION COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY  
ET AL.

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*Submitted March 11, 1910. Decided May 2, 1910.*

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Agent of initial carrier not found, under the facts, to have misrouted complainant's shipment of grapes. Complaint dismissed.

*Wilson, Mercer, Holsinger, Swan & Ware and F. H. Stinchfield* for complainant.

*Andrew Lees* for Chicago, Burlington & Quincy Railroad Company.

*James B. Sheean* for Chicago & North-Western Railway Company.

*M. L. Bell and A. B. Enoch* for Chicago, Rock Island & Pacific Railway Company.

#### REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

On September 8, 1906, complainant's agent shipped from Montrose, Iowa, to Rochester, Minn., a carload of grapes for complainant. The shipment weighed 24,000 pounds and defendants collected 77.09 cents per 100 pounds, or \$186.96. It is alleged in the complaint that the shipment was tendered to the Chicago, Burlington & Quincy Railroad Company at Montrose without routing instructions, and that had it been forwarded by the cheapest route the charge would have been 30 cents per 100 pounds. Reparation against the Chicago, Burlington & Quincy in the sum of \$114.96 is asked. This claim was presented to the Commission informally August 29, 1908.

The shipment moved from Montrose to Burlington, Iowa, over the Chicago, Burlington & Quincy, from there over the Chicago, Rock Island & Pacific to Goldfield, Iowa, and from thence to destination over the Chicago & North Western. There was no through rate applicable to this route and the sum of the locals was charged. At the

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same time there was in effect a through rate of 30 cents on this traffic applicable over the Chicago, Burlington & Quincy from Montrose to Galena Junction, Ill., and thence over the Chicago Great Western to Rochester, and also over the Chicago, Burlington & Quincy to Sterling, Ill., and thence over the Chicago & North Western to Rochester.

The only question presented is whether the Chicago, Burlington & Quincy misrouted the shipment. The original bill of lading is lost and a copy in the possession of complainant was introduced in evidence. The copy shows that the shipment was billed to complainant at Rochester, Minn., "via Bur."

Complainant's agent testified that he did not route the shipment. He also stated that he never routed shipments for complainant, except on instructions from it; and that he had no knowledge of rates or routes from Montrose to any point. The traffic manager of complainant testified that he gave no instructions with respect of the routing of the car in question.

The station agent of the Chicago, Burlington & Quincy at Montrose testified that the shipment was routed by complainant's agent; that he protested against the routing via the Chicago, Rock Island & Pacific, as it meant loss of revenue to his road; and that complainant's agent declared he desired to route the shipment by way of the Chicago, Rock Island & Pacific because of expedition, that route taking one day less to make delivery than the routes to which the lower rate is applicable.

It is shown that the Chicago, Burlington & Quincy's revenue out of the shipment would have been greater had the shipment moved to Galena or Sterling. It is further insisted by the Chicago, Burlington & Quincy that the notation on the billing "via Bur" meant delivery to the Chicago, Rock Island & Pacific at Burlington, as Burlington is the junction point with the latter road on shipments from Montrose. If the routing had been via the routes to which the 30-cent rate was applicable the billing would have read "via Galena" or "via Sterling," the junction points with the Chicago Great Western and Chicago & North Western, respectively. It is further insisted that the bill of lading was made as directed by complainant's agent and was delivered to him at Montrose.

The evidence shows that complainant shipped 20 cars of grapes from Montrose to St. Paul and Minneapolis during the year 1906; that on the first car instructions were given by complainant to its agent to route the shipment over the Chicago, Rock Island & Pacific from Burlington; and that all these cars were sent that way.

The fact that complainant's agent knew nothing of rates or routes would indicate that he had no reason to think that higher charges would accrue if the shipment moved over the Chicago, Rock Island &

Pacific from Burlington, which was the route taken by all previous shipments to the northwest. On the other hand, every reason would dictate that if left to his own judgment in the matter the agent of the Chicago, Burlington & Quincy at Montrose would have sent the shipment over the route which would secure the larger revenue to the road for which he was acting.

Under all the facts, we are unable to find that the shipment in question was misrouted by the Chicago, Burlington & Quincy agent. The reasonableness of the rate applicable to the route the traffic moved is not challenged and no hearing was had and no finding can properly be made with respect thereto. The complaint will therefore be dismissed.

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No. 2696.

KENTUCKY WAGON MANUFACTURING COMPANY

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

No. 2774.

MILBURN WAGON COMPANY

v.

TOLEDO, ST. LOUIS & WESTERN RAILROAD COMPANY  
ET AL.

*Submitted April 4 and 28, 1910. Decided May 2, 1910.*

A water competitive rate was increased and shortly thereafter was restored; *Held*,  
That the rate was forced down by water competition. Reparation denied.

*G. M. Robinson* for Kentucky Wagon Manufacturing Company.

*Smith & Baker*, by *E. R. Effar*, for Milburn Wagon Company.

*Edmund F. Trabue* for Illinois Central Railroad Company and  
Atchison, Topeka & Santa Fe Railway Company.

*F. C. Dillard*, *P. F. Dunne*, and *C. W. Durbrow*, by *Mr. Wilcox*, for  
Southern Pacific Company.

*M. L. Bell*, *W. T. Hughes*, *F. C. Dillard*, *N. H. Loomis*, *D. L. Wil-  
liams*, *W. W. Cotton*, *W. F. Herrin*, by *Hale Holden*, for Chicago,  
Rock Island & Pacific Railway Company; Union Pacific Railroad  
Company; Oregon Short Line Railroad Company; Northern Pacific  
Railway Company; Oregon Railroad & Navigation Company; Chicago,  
Burlington & Quincy Railroad Company; and Southern Pacific Com-  
pany.

*J. B. Baird* for Northern Pacific Railway Company.

#### REPORT OF THE COMMISSION.

**CLARK, Commissioner:**

These complaints involve the same principle and will be considered  
in one report.

They both pray for reparation—No. 2696, in the sum of \$40 on one  
carload of farm wagons, weighing 40,000 pounds, shipped March 24,

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1909, from Louisville, Ky., to Sacramento, Cal.; and No. 2774, in the sum of \$250.13 on seven carloads of farm or dump wagons, weighing 250,130 pounds, shipped on various dates between January 29 and May 21, 1909, from Toledo, Ohio, to Portland and Eugene, Oreg., and Seattle, Wash.

Prior to January 1, 1909, the rate on wagons from Missouri River territory to Pacific coast terminals was \$1.25 per 100 pounds. On that date the rate was increased to \$1.35. June 5, 1909, the \$1.25 rate was restored. The basis of reparation claimed is the difference between these rates.

The rate had been \$1.25 from 1904, and prior to that date for some time \$1.15.

Before the advanced rate became effective, protests were made against it by the National Wagon Manufacturers' Association, the members of which manufacture three-fifths of the farm and mountain wagons produced in the United States, and by other shippers and receivers of wagons. These protests continued after the increase became effective, and the carriers decided to reestablish the former rate.

Complainants rely on decisions of the Commission to the effect that the maintenance of a rate for a long period of time and its restoration after an unexplained advance is in the nature of an admission that the original rate was and is reasonable. They contend that the burden is on the defendants to justify the advance.

Defendants insist that the \$1.25 rate was and is abnormally low and was established to meet water competition, and that the normal basis of rates for the commodity is the same as that applicable to agricultural implements, Class A under the Western Classification, \$1.60 per 100 pounds. It is testified that the increase in the rate, which was not alone applicable to farm and dump wagons, was made to secure additional revenue and that it was maintained until it was actually demonstrated that shipments were being diverted to the water routes. It is argued that it is not necessary that actual competition be shown, but that potential water competition may and does strongly influence rates.

Farm and dump wagons are manufactured in the states of Illinois, Indiana, Ohio, and Pennsylvania. Years ago the traffic consisted of the complete article, but to-day the beds and seats are manufactured on the Pacific coast.

Comparisons of rates on farm wagons in other sections of the country were submitted, from which it was sought to indicate that the rate per ton per mile to Pacific coast terminals was low.

So far as actual movement by water was concerned, the only testimony had reference to a shipment by Studebaker Brothers Company

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of two carloads of farm wagons, shipped February 25, 1909, from South Bend, Ind., to San Francisco via Brooklyn and the American-Hawaiian Steamship Company, the rate on which was \$1.25 per 100 pounds. The only additional expense in making shipments via that route as compared with the all-rail route is that each piece has to be marked, and boxing is necessary. No testimony was available as to the condition in which the wagons arrived, or whether or not the time was satisfactory. Because the commodity is varnished the rail routes are preferred. This shipment was made for its moral effect and to show the rail carriers that the shippers were not entirely dependent upon them for transportation. Complainants admit that fifteen years ago there was a considerable movement of farm wagons via the water routes to the coast. Two or three years ago an arrangement was made with the Tehuantepec Railway by which the American-Hawaiian Steamship Company's steamers connect with it at both the Atlantic and Pacific coasts. The service has been greatly improved, the distance shortened, and there are regular sailings about once a week from New York, the steamers touching at San Diego, San Francisco, Seattle, and Tacoma. Under this improvement in the service the tonnage from the east has vastly increased.

In *Liebold Co. v. D., L. & W. R. R. Co.*, 17 I. C. C. Rep., 503, it was said:

These cases are clearly distinguishable from that class of cases where a rate long in force is advanced, maintained at the higher figure for a short time, and then voluntarily reduced to the former basis, without satisfactory explanation of the advance. In this case the restoration of the old rate per 100 pounds was accompanied with an increase of the carload minimum which operates to give greater carload earnings than the \$1.10 rate applied to the former minimum. The basis of reparation must be a finding of fact that the rate actually charged was unreasonable, and we are not prepared to make such a finding upon the record in these cases.

In *Fuller & Co. v. P., C. & Y. Ry. Co.*, 17 I. C. C. Rep., 594, the same situation as is here presented was considered, the defendants insisting that the restored rate had been forced by water competition, and the Commission found that the evidence tended strongly to support that contention. Complainants insist that these cases are distinguishable from those now before us in that in the *Liebold case* the restoration of the former rate carried with it a raise in the carload minimum, thereby increasing the defendants' car earnings, and that in the *Fuller case* the Commission found that the evidence sustained the claim of water competition.

Defendants urge that even conceding that wagons are not now water-borne, the previously existing water competition did have the effect of establishing the rate on a low commodity basis; that this Pacific coast terminal rate is still influenced and controlled by such water competition, and that even though the low all-rail rate may

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have caused a discontinuance of shipments by water, that fact would not prevent a revival of shipments by water if the rail rates were advanced.

In many cases the Commission has expressed the opinion that Pacific coast terminal rates are compelled by water competition. In *Bulte Milling Co. v. C. & A. R. R. Co.*, 15 I. C. C. Rep., 351, the question was presented whether the rail carriers must wait until actual water competition becomes formidable before they may safely adjust their rates to meet it, and it was held that there is no such rule of law. The suggestion that carriers may not anticipate such competition did not appeal to the Commission as logical from any point of view. Must the carriers maintain the increased rate until an important volume of traffic has been actually diverted to the water lines in order to prove the effect of such competition, or to justify the previously existing lower basis? We think not. It appears that immediately upon the rail rate being increased a shipment was made by water at 10 cents per 100 pounds less than the advanced rate of the rail carriers. It is hardly consistent to demonstrate the feasibility and availability of a water route and then prove that such competition is imaginary. The rate having been forced down from \$1.35 to \$1.25 by the controlling effect of water competition, we can not find that the \$1.35 rate was unreasonable, and it follows that the prayers for reparation must be denied, and it will be so ordered.

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No. 1778.

H. GUND &amp; COMPANY

v.

CHICAGO, BURLINGTON &amp; QUINCY RAILROAD COMPANY.

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*Submitted April 23, 1909. Decided May 2, 1910.*

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Complainant asks reparation upon all grain passing through its country elevators at interior points in the state of Nebraska, which grain was shipped through Missouri River points to eastern destinations, upon the ground that an elevation allowance was made by defendant to complainant's competitor for "elevation-in-transit" at Nebraska City, a Missouri River point; *Held*, That reparation will not at this time be awarded.

*C. J. Smyth* and *Ed. P. Smith* for complainant.

*J. E. Kelby*, *H. F. Rose*, and *Hale Holden* for defendant.

#### REPORT OF THE COMMISSION.

##### *LANE, Commissioner:*

Complainant, a corporation, is engaged in the business of buying and selling grain. It operates elevators at Blue Hill, Bladen, Campbell, Carter, Cowles, Rosemont, and Upland, points in Nebraska on the lines of the defendant's railway. These elevators are used for the purpose of receiving grain, elevating, cleaning, mixing, grading, and loading the same into cars for transportation over defendant's line.

Complainant asks reparation for discrimination, the basis of its complaint being as follows: A competitor of complainant, the Duff Grain Company, a corporation with headquarters at Nebraska City, is the owner of elevators at Upland and Rosemont, points at which complainant is located, and also at Lawrence and other points on the defendant's railroad line, and is in competition with complainant in the business of buying and selling grain. The Duff Grain Company also owns at Nebraska City, Nebr., a large elevator in which it does its cleaning, grading, and mixing of grain for its other elevators above mentioned. Grain from country elevators is shipped by it to Nebraska City on local bills of lading, with no provision or indication whatever in the contract of transportation that the grain is en route to any points other than Nebraska City. This transportation is intrastate and the rates are regulated by the Nebraska state commission.

It is alleged in the complaint that from October 1, 1906, and prior thereto up to and including July 19, 1907, the defendant paid secretly an elevator allowance of  $1\frac{1}{4}$  cents per 100 pounds to the Duff Grain Company at Nebraska City on all grain delivered to such elevator by defendant and subsequently reshipped to points beyond. This allowance was paid upon proof of transportation to the elevator and of subsequent transportation under an independent contract from the elevator. Beginning July 19, 1907, this allowance was reduced to three-fourths cent per 100 pounds and the tariff provision for the same was published.

Complainant shipping from its elevators at Blue Hill, Bladen, Campbell, Carter, Cowles, Rosemont, and Upland through Nebraska City to points beyond, in competition with the Duff Grain Company, was charged through rates equal to the sum of the rates from such country stations to Nebraska City plus the rates paid by the Duff Grain Company from Nebraska City to the points beyond. The Duff Grain Company, however, received the allowance above named, thus paying a lower total rate than was open to the complainant, although the Duff Grain Company received a larger service by the amount of the switching and other delivery services at Nebraska City made necessary by the divided shipments to and from that point. Complainant also alleges that an elevator allowance of the same sort was paid by the defendant to the Central Granaries Company at Lincoln, Nebr. The evidence fails, however, to show competition between the complainant and the latter-named company. We find that competition was active between the complainant and the Duff Grain Company throughout the time of the transactions mentioned in the complaint and evidence.

The allegation that this allowance was paid to the Duff Grain Company secretly between October 1, 1906, and July 19, 1907, is not sustained. On July 19, 1907, however, an allowance of three-fourths cent per 100 pounds was made effective under the following rule:

On shipments of grain and seeds shipped via the C., B. & Q. R. R. or Q., O. & K. C. R. R. transferred through elevators those companies will pay cost of transfer not to exceed  $\frac{1}{4}$  of a cent per cwt. and such service as elevator doing the transfer includes in charge, when destination is point on the Mississippi River (or points west thereof taking same rates) and beyond, at the following points: Council Bluffs, Ia.; Omaha, Nebr.; South Omaha, Nebr.; Kansas City, Mo.; St. Joseph, Mo.; Atchison, Kans.; Leavenworth, Kans.; Elwood, Kans.; Nebraska City, Nebr.; Rulo, Nebr.; Lincoln, Nebr.; Fremont, Nebr.; and Missouri Valley, Ia. On shipments originating west of Missouri River payment will only be made to elevators actually performing the service regardless of ownership of the grain or seed. No payment will be made where a similar payment has been made on the same grain or seed at same point by some other carrier.

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From and after July 19, 1907, therefore, this allowance of three-fourths of a cent per 100 pounds at Nebraska City has been paid as alleged by the complainant. The prayer is for reparation to the extent of three-fourths of a cent per 100 pounds upon all shipments made through Nebraska City in competition with the Duff Grain Company during this period.

The elevation-allowance question is not new to the Commission. On June 29, 1908, the Commission issued orders forbidding the Chicago, Burlington & Quincy Railroad, the Missouri Pacific Railroad, the St. Louis & San Francisco Railroad, the Chicago, Rock Island & Pacific Railway, the Missouri, Kansas & Texas Railway, and in effect forbidding the Union Pacific Railroad to pay or allow owners or lessors of elevators at Omaha, Kansas City, and other cities on the Missouri River such allowances as the one here under consideration. *In the Matter of Allowances to Elevators* (Union Pacific Elevator) 14 I. C. C. Rep., 315; *Traffic Bureau, Merchants' Exchange, of St. Louis v. C., B. & Q. R. R.*, 14 I. C. C. Rep., 317, 331, 510.

This decision of the Commission was based upon its knowledge of the facts. We know from our experience with the problems here involved, and from the special investigation given this subject, that this allowance is unduly discriminatory and unduly preferential, and that it serves to strengthen the dealers in grain who receive it as against their competitors at other points on the same lines of railroad who do not receive it. We have determined, furthermore, from such experience and such examination that it is not an allowance for any service rendered to the railroad company, but that it is a payment by the railroad for service rendered by elevators to the owners of the grain. This being so, it is simply a concession from the published rates wherever paid.

Our orders in the above case have been suspended by the United States circuit court for the western division of the western district of Missouri, the learned judges sitting in such court having determined that our findings of fact were mistaken and having made findings of fact at variance thereto. *Peavey & Co. v. Union Pacific R. R. Co.*, 176 Fed. Rep., 409. While we recognize that upon questions of law this Commission must and should yield to the courts, we also understand from repeated decisions of the Supreme Court that the courts are not competent to determine questions of fact within the jurisdiction of this Commission as against the Commission after the latter, upon complaint and answer, has investigated such questions and found thereon. Were we more doubtful than we are on this point, a perusal of the opinion of the court in this matter would constrain us to adhere to this conclusion. This opinion throughout deals with the elevation at Missouri River points as if it were a mere

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transfer of through shipments from car to car for the convenience of carriers. For instance, the opinion says:

The schedules of the carriers and their practice limit this elevator allowance or payment to grain coming into the elevators from the west which is actually loaded out into cars sent north, south, or east, and this service of unloading grain out of cars which have brought it from the west and loading it into cars which carry it to points east, north, and south is elevation and transfer in transit within the meaning of the amended interstate commerce act.

The bills of lading covering the business here discussed prove to our minds that the above conclusion of fact reached by the court is not correct. The bills of lading show that the shipments to the elevators are made locally without any reference whatever to any possible further transportation at some future time. The bills of lading and other documents describing the shipments of grain from these elevators show that no attempt whatever is made to identify the shipments out with any particular shipments in. The grain which goes out may be the grain which was hauled in by the carrier paying the allowance or it may be grain which reached the elevator in some other way. The only proof required is that the tonnage of grain shipped out shall be equal to the tonnage of grain shipped in. Such shipments can be called through shipments only by construction.

The opinion of the court speaks of elevation as if it were merchandising, which is precisely what the elevation for which this allowance is made is in every case. The merchandising of grain, however, is no part of the duty of the carrier. For carriers to pay shippers for any of the operations of merchandising, under the pretext that the payment is for service rendered to the carrier, is for the carrier to make reductions from published rates by subterfuge. Such allowances can not possibly be paid to all shippers. Their purpose would be lost if they were. They are intended to create an inequality and would not be paid did they not do so.

The learned court for proof that the shipments are in continuous transportation throughout the period of elevation and merchandising cites and rests upon the fact that they are moved from Missouri River points to the east upon so-called proportional rates, saying:

It is said that the grain upon which the allowance is made is not elevated or transferred in transit because it is shipped from points of origin in Kansas and Nebraska to the Missouri River upon local rates and local waybills, but the proportional rate is the balance of the through rate. There are proportional rates beyond the Missouri River and the Mississippi River and points east, west, north, and south which are less than the local rates between those points, and this grain which comes from points west of the Missouri River takes not the local but these proportional rates east of the river upon the certificates or expense bills of the companies west of the river which show whence it came.

We are unable to understand how the name given by the carriers to the rate imposed upon the second shipment can determine the legal  
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character even of such second shipment. We have still more difficulty in understanding how the name given such rate can relate to and determine the character of the shipments into the elevators upon separate and independent bills of lading. Our perplexity is made still greater by a reference to these very rates in a case recently decided by the circuit court of appeals for the circuit which includes the western division of the western district of Missouri, two of the judges who made the decision here discussed taking part. This case was *Wisconsin Central Railroad Co. v. United States*, 169 Fed., 79. A carrier was under prosecution for making an elevation allowance without tariff authority. Its defense turned upon the point that the shipments were in continuous transportation during the period of elevation, and its proof of the fact was that transportation from the elevator was given upon a "proportional" rate identical in nature with the proportional rate discussed by the court in the decision here under consideration. The court of appeals said:

Some significance is attached to the name given to the rate of 7½ cents per 100 pounds on shipments to Milwaukee and Chicago. It was called in the tariff schedules proportional freight tariff on grain and flaxseed when originating west of the Mississippi River. The tariff shows that there was no joint tariff or arrangement of any kind existing between the railway company and any other connecting carriers operating west of Minneapolis. In such circumstance we fail to discern any advantage to the railway company by the use of that inaccurate designation of its tariff.

We also have in mind the fact that the carriers from the Missouri River to the east are now dropping the pretense that these are portions of through rates, and are publishing them as "reshipping rates."

Shipments such as those made to Nebraska City by the Duff Grain Company are local to that point. The delivery in accordance with the contract of transportation ends the transaction. The grain is not in transportation during the time of elevation, nor does transportation again begin until the grain has been loaded in the cars for outbound shipment in accordance with the tariff publications of the carriers governing such carload shipments. *G., C. & S. F. Ry. Co. v. Texas*, 204 U. S., 403; *A. & V. R. Co. v. Railroad Commission of Miss.*, 203 U. S., 496.

The carriers whose lines end at the Missouri River, such as the Union Pacific, are in competition throughout Nebraska and Kansas with carriers whose lines extend through to Chicago or St. Louis, such as the Chicago, Burlington & Quincy, the Chicago & North Western, the Atchison, Topeka & Santa Fe, and the Missouri Pacific. The carriers whose lines end at the Missouri River desire, naturally, that grain markets should be established at their terminals. They also desire to join with other connecting carriers in the publication of through joint rates to points beyond, the same in amount as the sum of their rates to the river plus the rates of connecting carriers to

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destinations beyond. Their desire to have markets at the Missouri River leads them to seek devices by which the rates upon shipments unloaded at the river and then reshipped beyond shall be less than the rates for shipments consigned directly to the points beyond. Being unwilling either to give up the advantage of fostering the markets at their terminals, or to abandon the joint rates to points beyond, they have devised the system of elevator allowances upon shipments to the river when reshipped beyond as a means for making rates to patrons of elevators at the river which shall be less than the rates given other shippers who do not patronize such elevators. To maintain a system by which through rates shall exceed the sum of the local rates based upon the cities at their terminals is the purpose and effect of these allowances. This Commission has repeatedly ruled, however, passing upon the question as a matter of fact, that a through rate in excess of the sum of the locals is *prima facie* unreasonable. Upon shipments of grain from country points in Nebraska to the Missouri River, there unloaded into an elevator, afterwards loaded and shipped beyond, the carriers render transportation from the first point of origin to the final destination with four terminal services, one at the point of origin, two at the river, and one at the final destination. Upon shipments of grain moving directly from origin to final destination the two intermediate terminal services are rendered unnecessary. A higher rate for the smaller service, under circumstances that are identical, is, as this Commission has held, unreasonable.

With all due respect to the circuit court for the western division of the western district of Missouri, this Commission is constrained by the facts to adhere to its view that these allowances are unduly discriminatory and unduly preferential both in purpose and in effect. It therefore declines at this time, and until its position shall have been finally overruled by the higher courts, to extend the benefit of this system of elevator allowances to complainant's elevators.

What is above said with regard to the view that the purpose and effect of these allowances is to cause through rates to be greater in amount than the sum of the locals was not discussed at the hearing or argument in this proceeding. It would be improper, therefore, to base any award of reparation thereon. No dismissal of this complaint will be made, inasmuch as this would cause the statute of limitations to run against complainant's claim. It will be held for further action when the decision of the Supreme Court upon the matters here involved shall have indicated the power of the Commission in the premises.

No. 2466  
NATIONAL MANUFACTURING COMPANY  
v.  
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

*Submitted March 11, 1910. Decided May 2, 1910.*

An initial carrier may be negligent when, after a shipment has started on its journey, it upon request fails to divert a shipment (moving on routing instructions furnished by the shipper) so that a lower rate may be availed of. But there is a primary and a greater duty of all the carriers named in the routing instructions to have reasonable rates in effect; and if they fail, reparation will be given upon that ground rather than for the negligence of the initial line in failing to divert the shipment and which failure resulted in having the shipment moved in conformity to the routing instructions.

*George T. Bell* for complainant.

*I. D. Hook* for Chicago Great Western Railway Company.

*Louis C. Jack* for Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Canadian Pacific Railway Company; and Spokane International Railway Company.

REPORT OF THE COMMISSION.

**LANE, Commissioner:**

The complainant corporation on May 18, 1907, shipped a carload of sirup from St. Joseph, Mo., to Pullman, Wash., the latter point being located on both the Oregon Railroad & Navigation and the Northern Pacific railroads. The shipment weighed 40,600 pounds, upon which there was charged and collected the sum of \$497.35, based upon a rate of \$1.22½ per 100 pounds. Claim for reparation in the amount of \$101.50, based upon a 97½-cent rate, was filed informally with the Commission on October 15, 1907, and is likewise asked in this formal complaint.

An agent of the Minneapolis, St. Paul & Sault Ste. Marie Railway, hereinafter called the Soo Line, solicited the traffic and quoted a 97½-cent rate, thinking that the point of destination was in the Spokane rate territory, which did enjoy such a rate, though in fact the legal rate was \$1.22½. But immediately after the shipment moved

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a 97½-cent rate over the route the shipment traveled has been extended to Pullman. As a result of this solicitation the complainant gave routing instructions to transport the sirup over the Chicago Great Western (the initial line), Soo Line, Canadian Pacific, Spokane International, and Oregon Railroad & Navigation Company railroads. The shipment was forwarded from St. Joseph with these routing instructions, but before it was delivered to the Soo Line at Minnesota Transfer the agent of the Soo Line who had originally solicited the traffic discovered that the 97½-cent rate did not apply to Pullman via his line, but only in connection with the Northern Pacific. He therefore requested the Chicago Great Western to divert the shipment to the Northern Pacific at Minnesota Transfer when it should arrive at that point, so that the 97½-cent rate which he had quoted could be applied. Though this request was made in ample time, for some reason the diversion was not accomplished and the car moved over the Soo Line, necessitating the application of the \$1.22½ rate. The question is as to liability. Representatives of the Chicago Great Western and the Soo Line admit that one of them is liable for the amount claimed, and desire that the Commission determine the point. But the carriers who actually participated in the movement now have in effect this 97½-cent rate, and we are of the opinion that all of them, since they have collected money which the complainant is seeking to reach, should join in repayment, each refunding the difference between what they actually received and the division of the joint rate of 97½ cents now in effect, and which, it seems, they did intend to have applied at the time of the movement. It was the primary duty of all those carriers to have reasonable rates in effect at the time, and we find that a reasonable and just charge for the movement in question would have been 97½ cents per 100 pounds. Notwithstanding the fact that the initial carrier, the Chicago Great Western, may have been negligent in failing to divert the car at Minnesota Transfer, which point is not decided, there is a primary, as well as a greater, duty of all the participating carriers to have reasonable rates in effect.

Reparation is awarded in the amount of \$101.50, with interest, and an order will be drawn in conformity with this finding.

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No. 3028.

A. S. BLOCK &amp; COMPANY

v.

LOUISVILLE &amp; NASHVILLE RAILROAD COMPANY.

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*Submitted March 9, 1910. Decided May 2, 1910.*

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Carload rates on strawberries from Pomona and Humboldt, Tenn., to St. Louis, Mo., are the same. 308 crates were shipped from Pomona to St. Louis, but were stopped en route at Humboldt, where 217 additional crates were placed in the car for transportation to St. Louis. The carrier charged the sum of the rates based on Humboldt, which were an any-quantity rate to Humboldt and a carload rate beyond; *Held*, That, since the carload rate was the same from Pomona and Humboldt, the rate was unreasonable in so far as it exceeded the rate from Humboldt. Reparation awarded.

*Peers & Peers* for complainant.

*Ed. Baxter* for defendant.

## REPORT OF THE COMMISSION.

LANE, *Commissioner*:

On May 22, 1909, the complainant caused to be shipped from Pomona, Tenn., 308 crates of strawberries, weighing 10,780 pounds, consigned to itself at St. Louis, Mo. The defendant has no agent at Pomona, it being located on a switch or spur of the defendant 2 miles from Humboldt, Tenn., where traffic originating at Pomona is billed. The same carload rates to St. Louis apply from both places. The car, partly filled, was transported to Humboldt and loaded with 217 additional crates, weighing 7,595 pounds, making the aggregate weight of the shipment 18,375 pounds. The car was then moved to St. Louis, where there was collected the sum of \$132.81, based upon a freight rate of 23 cents per 100 pounds (any quantity) from Pomona to Humboldt, and 39 cents (carload) from Humboldt to St. Louis; \$8 for stripping and bracing; \$22.50 for icing at Humboldt; and \$5.86 for icing at Evansville, Ind. The complainant asks reparation in the amount of \$19.79, which is the amount charged for the transportation from Pomona to Humboldt, less a \$5 charge for concentration, the complainant alleging and the defendant admitting that a concen-

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tration privilege exists on other parts of defendant's line by which less-than-carload lots are consolidated at a concentration point for a charge of \$5 per car, or the quantity of the shipment, and there consolidated in full carloads for reshipment, the rate applying being the rate from the concentration point.

The rates charged upon the shipment were the legal rates, and while we have before decided that concentration or transit privileges should not be given retroactive effect for the purpose of granting reparation, nevertheless since the 39-cent rate applied from Pomona, the originating point, as well as from Humboldt, the consolidating point, and the defendant would have been compelled by its tariff to have transported the entire shipment from the originating point to destination at the same rate it applied from Humboldt, we are of the opinion that reparation should be granted in the amount of \$19.79, with interest from May 22, 1909. In view of the admitted intention of the defendant to put in at once a concentration privilege at Humboldt as applying to movements from Pomona, no order in this matter will be now made, but it is expected that such a rule will be promptly incorporated in the defendant's tariff, and upon receipt of such tariff an order for reparation will be issued.

18 L. C. C. Rep.

No. 2045.

SACKETT PLASTER BOARD COMPANY

v.

BUFFALO, ROCHESTER &amp; PITTSBURG RAILWAY COMPANY ET AL.

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*Submitted July 23, 1909. Decided March 14, 1910.*

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1. Complaint herein is directed against the relation of rates between plaster and plaster board from Garbutt, N. Y., to points in New York, Pennsylvania, and New England, but particularly from Garbutt to New York City; *Held*, That the present relation complained of wherein plaster board takes a much higher rate per ton than plaster results in unjust discrimination against and unreasonable rates for plaster board, and the difference between the rates on the two commodities ordered to be reduced.
2. Defendants will be expected to adjust their rates to other destinations substantially on the relative basis herein prescribed on shipments to New York and points taking the same rates.
3. The case will be held open to enable the carriers to readjust their rates in accordance with these findings and to allow the complainant to submit proofs as to reparation.

*Edo E. Mercelis and Henry M. Dater* for complainant.

*James S. Havens* for Buffalo, Rochester & Pittsburgh Railway Company.

*H. Murray Andrews* for Erie Railroad Company.

#### REPORT OF THE COMMISSION.

**CLEMENTS, Commissioner:**

Complainant is engaged in the manufacture of plaster board at Garbutt, N. Y., Grand Rapids, Mich., and Fort Dodge, Iowa, and in this proceeding questions the reasonableness and justness of defendants' transportation rates on carload shipments of this commodity from Garbutt particularly to New York City (moving interstate), but to a lesser extent to points in New York, Pennsylvania, and New England. The complaint is directed to the relative rates on plaster and plaster board, the manufactured product, and using the New York rate as representative, evidence was introduced at the

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hearing purporting to show that unjust discrimination exists in that while prior to June 1, 1907, a commodity rate of \$2 per ton applied both to wall plaster and plaster board to that point, the sixth class rate of \$2.60 was on that date made to apply on plaster board, the commodity rate on plaster not being disturbed. Claim is made for reparation on complainant's shipments via defendants' lines based on the excess over the plaster rate.

The defendants, Buffalo, Rochester & Pittsburgh Railway Company and Pennsylvania Railroad Company, are the originating carriers, the other defendants being connecting carriers that participate in the through transportation to New York City and contiguous territory, which is the Garbutt factory's principal market. The justification offered by defendants for the difference between the rates now maintained is that plaster board is a more valuable commodity than wall plaster.

Upon full hearing, investigation, and consideration of all the facts, circumstances, and conditions shown, it is the opinion and conclusion of the Commission that the present relation complained of results in unreasonable discrimination, unjustly prejudicial to the producers and shippers of plaster board, and unduly preferential to the producers and shippers of wall plaster. It is also our conclusion that the rate from Garbutt, N. Y., to New York City of \$2.60 per ton on plaster board in carloads is unreasonable and unjust, and that a rate not in excess of \$2.35 would be reasonable and would remove the unjust discrimination now existing. Defendants will be expected to adjust their rates to other destinations substantially on the relative basis herein prescribed on shipments to New York and points taking the same rate.

We therefore find and conclude that complainant is entitled to reparation on its shipments of plaster board from Garbutt to the various destinations on defendants' lines, measured by the difference in case of New York shipments between \$2.60 and \$2.35, and on shipments to other destinations by the same relative difference in rate on plaster and plaster board which we herein hold to be just and reasonable. The case will be held open to enable the carriers to readjust their rates in accordance with these findings, and that the parties may compile and submit a list of shipments, with a statement of the amount of reparation due complainants on shipments moving within the period of limitation. An order of reparation will then be issued.

18 I. C. C. Rep.

No. 3018.

ACME CEMENT PLASTER COMPANY

v.

ST. LOUIS &amp; SAN FRANCISCO RAILROAD COMPANY ET AL.

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Submitted March 9, 1910. Decided May 2, 1910.

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The limitation clause contained in the act to regulate commerce does not cease to run against the claim involving reparation for the charging of an excessive rate between two points when an informal complaint is filed asking a refund of an intermediate switching charge, when the informal complaint nowhere asks relief in respect to the rate.

*W. E. Fisse* for the complainant.

*B. M. Flippin* for Missouri Pacific Railway Company.

*Edward A. Haid* and *F. H. Wood* for St. Louis & San Francisco Railroad Company.

#### REPORT OF THE COMMISSION.

##### PROUTY, Commissioner:

The complainant on June 25, 1907, shipped from Cement, Okla., to Leadwood, Mo., a carload of cement plaster, weighing 30,000 pounds, upon which there was charged and collected the sum of \$102, based upon a rate of 20½ cents per 100 pounds and a \$3 intermediate switching charge at St. Louis. There was no joint rate in effect and this rate of 20½ cents was constructed of the separately established charges of the St. Louis & San Francisco from Cement to St. Louis of 12½ cents, minimum weight 60,000 pounds, and of the St. Louis, Iron Mountain & Southern, namely, a ½-cent switching charge at St. Louis, minimum weight 40,000 pounds, and an 8-cent rate, minimum weight 30,000 pounds, from St. Louis to Leadwood. Subsequent to the movement the St. Louis & San Francisco raised the rate from Cement to St. Louis to 15 cents but reduced the minimum to 30,000, and also has absorbed the entire switching charge of the St. Louis, Iron Mountain & Southern at St. Louis by proper tariff, and the complainant asks reparation in the amount of \$33, based upon this reduction of the minimum and the absorption of the switching charge.

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On July 6, 1907, there was collected upon this shipment the sum of \$64.50, which sum was based upon a 12½-cent rate from Cement to St. Louis, with a minimum of 30,000 pounds. But subsequently this was found to be an undercharge, as the minimum was 60,000 pounds, so on August 30, 1907, an additional sum of \$37.50 was collected, making the total charge, as aforementioned, \$102. This formal complaint was filed December 9, 1909, more than two years after the freight charges were paid, and therefore these claims for reparation are barred, unless saved by informal complaint. An informal request was filed by the St. Louis & San Francisco on May 29, 1909, asking leave to refund the \$3 charge for switching. But at no time, save by this formal complaint, has there been presented to the Commission a claim for reparation based upon a reduction of the minimum between Cement and St. Louis, and no relief in relation thereto has ever been requested. It is clear that a claim for a refund of a switching charge at St. Louis is not a claim for a refund of an excessive charge or minimum for a haul from Cement to St. Louis. The same measure of damages will not govern, nor will the same evidence support both. They are distinct and separate and, in fact, were charged by separate carriers in different tariffs, only one of which was a party to the informal proceedings. We therefore hold that the claim for reparation for an excessive minimum applicable to a haul between Cement and St. Louis was not saved from the running of the statute of limitations through the filing of an informal complaint claiming reparation based only upon a switching charge at St. Louis.

Soon after the movement of this traffic the St. Louis & San Francisco provided, by proper tariff authority, for the absorption of switching charges like that involved; it has asked the Commission for leave to refund this particular charge, and it makes no objection to the granting of an order for reparation in that amount in this proceeding. But it is difficult to see how this Commission can make that order. The switching service was performed and the compensation for it collected by the St. Louis, Iron Mountain & Southern Company, and we can not find that the charge was unreasonable. Neither can we find that it was the duty of the St. Louis & San Francisco Company to have performed the service or to have made compensation to the St. Louis, Iron Mountain & Southern Company for its performance. Upon this record the complaint must be dismissed, and it will be so ordered.

18 L. C. C. Rep.

No. 2963.

TOWNLEY METAL &amp; HARDWARE COMPANY

v.

CHICAGO, ROCK ISLAND &amp; PACIFIC RAILWAY COMPANY.

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*Submitted March 11, 1910. Decided May 2, 1910.*

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Complainant shipped a carload of woven-wire fence over various lines upon a joint rate from Richmond, Ind., to Billings, Okla., at which place it was reconsigned to Wichita, Kans. The complainant contends that a reconsignment contained in a local tariff of the delivering carrier should have been the measure of the rate applied from Billings to Wichita; *Held*, That the tariff containing the joint rate established and controlled the reconsignment privilege, and that, as it did not apply to the shipment, reparation must be denied.

*George T. Bell* for complainant.

*M. L. Bell* and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

#### REPORT OF THE COMMISSION.

##### *PROUTY, Commissioner:*

The American Steel and Wire Company on October 31, 1907, shipped from Richmond, Ind., to Ponton Brothers, at Billings, Okla., at the request of the complainant, though the latter was not mentioned in the bill of lading, a carload of woven-wire fence weighing 36,870 pounds. The shipment arrived at Billings November 11, and when the delivering carrier tendered it to the consignee the shipment was refused because the freight charges had not been prepaid, the shipment having been sold f. o. b. at Billings. The evidence fails to disclose whether the delivering carrier notified the consignor mentioned in the bill of lading of the refusal of the consignee to accept the shipment, but it appears that on November 16, seven days after it had arrived at the point of destination, the complainant accidentally discovered that the shipment had not been accepted and immediately notified the defendant to reassign the shipment to Wichita, Kans. This was accomplished after a back haul of 120.2 miles. The total amount of charges collected was \$345.83, based upon a rate of 90 cents and a demurrage charge of \$14. The 90-cent rate was con-

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structed of a joint rate of 58 cents from Richmond to Billings, and a local rate of 32 cents from Billings to Wichita. The charges assessed from Richmond to Billings are not involved, the complainant attacking merely the rate charged for the back haul from Billings to Wichita, asserting that a rate of 7 cents per 100 pounds was applicable and claiming reparation in the amount of \$92.17. The claim for reparation was filed informally with the Commission on November 12, 1908.

In support of the contention that the 7-cent rate was applicable to the back haul, the complainant asserts that the reconsignment privilege promulgated in Chicago, Rock Island & Pacific, I. C. C. No. C-7761, amendment 11, effective between September 2 and November 1, 1907, the applicability of which was purely local to defendant's line, should have been the measure of the charges. But it is our rule that the tariff, naming the inbound rate to the point where reconsignment is availed of, must be used to ascertain what privileges, if any, are extended in the way of reconsignment. The tariff containing the joint rate upon which the shipment moved into Billings, at which point reconsignment was made, refers to another tariff for all privileges granted in connection with the rate, and in reference to reconsignment this latter tariff provides that—

The destination of any interstate carload shipment \* \* \* may be changed \* \* \* after it has reached the first destination, when the substituted destination is a point where through rates and divisions are in effect via route of movement.

It will be noted that the shipment was billed to Billings and there reconsigned to Wichita. An investigation of the tariffs on file with the Commission discloses the fact that no joint rates were in effect from Richmond to Wichita at the time of this shipment, so that under this provision the shipment could not have been reconsigned from Billings to Wichita. The charging of the local rate from Billings was, therefore, reasonable under the circumstances, and it becomes necessary to dismiss the complaint.

Attention is called to the provision for reconsignment above quoted, which is vague and uncertain and not in accordance with the requirements of this Commission for the publication of tariffs. While no order to that effect can be made in this case, it is expected that the carriers will at once revise this rule.

18 I. C. C. Rep.



No. 2931.

FRED. G. CLARK COMPANY

v.

BUFFALO &amp; SUSQUEHANNA RAILWAY COMPANY ET AL.

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*Submitted April 25, 1910. Decided May 9, 1910.*

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Rate on oil in tank cars from Stanards, N. Y., to Struthers, Pa., found to be unreasonable. Reparation awarded.

*C. D. Chamberlain* for complainant.

*Ed. A. Niel* for Buffalo & Susquehanna Railway Company.

## REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Rate of 10 cents per 100 pounds charged on five carloads of petroleum oil, weighing 256,481 pounds, shipped from Stanards, N. Y., to Struthers, Pa., on dates ranging from May 21 to August 9, 1909, is alleged to have been unreasonable and unjustly discriminatory. The Commission is asked to fix a maximum rate for the future and to award reparation in the sum of \$38.47, based on a rate of 8½ cents per 100 pounds.

Defendants admit the facts, but deny that the act has been violated in the particulars alleged, or that complainant is entitled to reparation. At the time these shipments moved a rate of 8½ cents per 100 pounds was in effect from Stanards to various points in Pennsylvania and Ohio, distant from Stanards from 119 to 247 miles, for example, Erie, Oil City, Titusville, and Warren, Pa. Stanards is located exclusively on the Buffalo & Susquehanna Railway and Struthers is local to the line of defendant Pennsylvania Railroad. Warren, Pa., is 1½ miles from Struthers, and is reached by the Pennsylvania and the Dunkirk, Allegheny Valley & Pittsburg roads.

These shipments moved via Keating Summit, Pa., the only route available from Stanards to Struthers, and the route specifically applicable under the tariff naming the 10-cent rate. The rate to Warren via the same route was also 10 cents. The 8½-cent rate to Warren was applicable via Buffalo and Wellsville, N. Y.

On December 22, 1909, the 8½-cent rate was made applicable from Stanards to Struthers via Keating Summit and that rate is now in effect.

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Defendant Buffalo & Susquehanna Railway shows that, because of the grades, at least four times as much tonnage can be hauled with one locomotive from Stanards to Buffalo on the route to Warren as can be hauled from Stanards to Keating Summit on the route to Struthers, and therefore insists that the circumstances and conditions obtaining via the two routes are dissimilar. The distance via either route is approximately 180 miles.

This defendant also contends that the establishment of the same rates from Stanards via Keating Summit as via Buffalo was an error of its tariff department; that its authority so to do contemplated points of destination west of the western termini of the trunk lines and not points on the dividing line in the interior of Pennsylvania, such as Warren and Titusville; that the establishment of the rate of 8½ cents to Struthers was a temporary measure pending investigation into the question of the revision of the rates on oil into the whole territory, and that its revenues from all sources for the years ended June 30, 1908 and 1909, were insufficient to pay fixed charges.

The 10-cent rate to both Warren and Struthers was continuously in effect from July 4, 1905, to December 22, 1909; the 8½-cent rate to Warren via Buffalo was established February 10, 1908. Therefore for nearly two years there was a lower rate in effect to Warren via Buffalo than via Keating Summit.

In *Dallas Freight Bureau v. G., C. & S. F. Ry. Co.*, 12 I. C. C. Rep., 223, it was said:

Varying conditions existing on different lines must of necessity justify difference in rates for hauls of the same distance. The real question \* \* \* is the reasonableness of the particular rate on the particular line between the particular points in question. In testing such a rate the rates on same or adjacent lines in the immediate territory where the same conditions exist are of much greater significance than rates over lines in other sections of the country.

On this basis, taking the rate of 8½ cents from Stanards to Painesville, 247 miles, it is seen that, even though in its inception it was an error of the carrier's tariff department, it has, nevertheless, been voluntarily maintained for more than two years, and we think that indicates its admitted reasonableness. The defendants have been voluntarily accepting the 8½-cent rate via Keating Summit for more than four months.

From a review of the record and all the circumstances we are of the opinion, and so find, that the rate of 10 cents per 100 pounds on petroleum in tank cars, minimum weight full capacity of the tanks, from Stanards, N. Y., via Keating Summit, Pa., to Struthers, Pa., as applied to these shipments, was unjust and unreasonable to the extent that it exceeded 8½ cents per 100 pounds, and that complainant is entitled to reparation in the sum of \$38.47, with interest from August 9, 1909. We further find that the rate for the future should not exceed 8½ cents.

It will be so ordered.

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No. 2990.

GEORGE HENLEY ET AL.

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY  
ET AL.

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*Submitted May 2, 1910. Decided May 9, 1910.*

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Complaint in fact involves two separate shipments. One was intrastate and one is barred by the statute of limitations. Complaint dismissed.

*Leonard Brisley* for complainant.

*William Ellis* for defendants.

#### REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

On October 19, 1907, complainant shipped from Armour to Lemmon, both in the state of South Dakota, a carload of emigrant movables weighing 26,770 pounds, and on that date prepaid charges thereon aggregating \$118.70.

Complaint alleges that at the time the car was loaded the railroad agent at Armour stated that there was no rate in effect to Hettinger, N. Dak.; that the only tariff he had showed Lemmon, S. Dak., to be the farthest station open for business on the Chicago, Milwaukee, & St. Paul Railway, of South Dakota (which was then under construction, and the name of which on January 4, 1909, was changed to Chicago, Milwaukee & Puget Sound Railway Company), and that for that reason he refused to bill the car to Hettinger. When the car arrived at Lemmon complainant was unable to obtain definite information as to when it could be transported to Hettinger and he removed a part of the contents of the car and proceeded to Hettinger by wagon, leaving M. M. Johnson in charge of the remainder of the contents of the car with instructions to forward same to Hettinger. Subsequently, on October 29, 1907, the car was forwarded from Lemmon to Hettinger billed at weight of 20,000 pounds on which, on November 3, 1907, at Hettinger, Johnson paid charges of \$22 at the rate of 11 cents per 100 pounds.

It is also alleged that on the date this shipment moved there was in effect a rate on emigrant movables from St. Paul, Minn., to Lemmon,

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S. Dak., of 17½ cents per 100 pounds, which, on December 14, 1907, was extended to Hettinger; that on December 20, 1907, the tariff of defendant contained a clause to the effect that the rates to stations on the Chicago, Milwaukee & St. Paul, of South Dakota, from stations on the Chicago, Milwaukee & St. Paul not named therein will be the same as from the next more distant station from which rates are named therein; that on March 30, 1908, Armour, S. Dak., was shown in a tariff as taking St. Paul rates, and that such adjustment is still in effect. Complainant contends that the 17½-cent rate from St. Paul to Lemmon in effect at the time this shipment moved should have applied from Armour to Hettinger, and reparation in the sum of \$93.85, based on the difference between the alleged unreasonable rates charged and the 17½-cent rate now applicable from Armour to Hettinger, is claimed. Petition shows that this matter was first called to the attention of the Commission in a letter dated October 27, 1909.

Defendants' answer states that they had been unable to verify the movement of the shipment, but that if it was as alleged in the petition it would constitute two separate and distinct shipments and the through rate could not be applied thereto. They deny that complainant is entitled to reparation, alleging that the charges collected were the only ones which could lawfully be applied.

The tariff files show that the agent at Armour correctly stated the fact when he informed complainant that Hettinger was not open for business. There were no rates in force from Armour to Hettinger on October 17, 1907, and none from Lemmon to Hettinger until October 25, 1907.

On October 29, 1909, the Commission received a letter from counsel for complainant in which, after setting forth the tariff rate applicable via line of the first-named defendant from Armour, S. Dak., to Lemmon, S. Dak., it is stated that:

On the 23d instant my client, Mr. George Henley, now of Hettinger, N. Dak., instructed me to present through your honorable body for the collection of the overcharge on St. Paul car No. 24376, which he shipped from Armour, S. Dak., on October 19, 1907, at a weight of 26,770 pounds, on which the charges were prepaid at Armour by George Henley in the sum of \$118.70.

He then asks, in view of the fact that the points of origin and destination of the shipment are both in South Dakota, what authority the carrier had for quoting rates in a tariff filed with the Commission. It was stated that counsel's understanding was that the final destination of the car was Hettinger, N. Dak., but that on account of the line being under construction at that time the agent at Armour billed the shipment to Lemmon, S. Dak.

Two questions arise involving the jurisdiction of the Commission over this controversy.

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First. Was the complaint filed within the period of limitation prescribed by the act?

Second. Was the movement from Armour to Lemmon part of an interstate movement?

Charges were prepaid on the movement from Armour to Lemmon October 19, 1907, and formal complaint was filed November 22, 1909. Therefore, if the complaint had not been previously called to the attention of the Commission the period of limitation had expired. We have already seen that complainant's counsel referred to the shipment from Armour to Lemmon in letter filed October 29, 1909, which was more than two years subsequent to the time at which the charges for that movement were paid. It is necessary, therefore, to determine, before the period of limitation can be fixed, whether or not the movement from Lemmon to Hettinger was a portion of an interstate movement. Inasmuch as charges were prepaid and bill of lading was issued for shipment from Armour to Lemmon, and on arrival at Lemmon complainant accepted custody of the shipment, removed a portion of same and left the remainder in possession of his agent, it is plain that that movement was intrastate and outside the jurisdiction of this Commission. The shipment from Lemmon to Hettinger was entirely separate and distinct. It did not include all of the freight which was shipped from Armour to Lemmon. Charges on it were based upon a different carload weight. It was shipped on a separate bill of lading and charges upon it were paid after arrival at Hettinger.

The letter of complainant's counsel contained no suggestion that the shipment was made from Lemmon to Hettinger, although it did say that the latter point was its intended destination. The letter was an inquiry in relation to the movement from Armour to Lemmon and contained no complaint relative to the movement from Lemmon to Hettinger, and therefore did not bar the running of the statute.

The shipment from Armour to Lemmon was wholly within the state of South Dakota and not within the jurisdiction of this Commission; and as to the shipment from Lemmon to Hettinger the complaint is barred by limitation.

The complaint will be dismissed.

18 I. C. C. Rep.

No. 2592.

CHATFIELD MANUFACTURING COMPANY

v.

LOUISVILLE &amp; NASHVILLE RAILROAD COMPANY ET AL.

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Submitted January 24, 1910    Decided May 2, 1910.

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Rate of 19 cents per 100 pounds held to be reasonable on roofing paper and materials from Carthage, Ohio, to Nashville, Tenn.    Reparation awarded.

*Joseph W. O'Hara* for complainant.

*Sloss D. Baxter* for Louisville & Nashville Railroad Company.

*R. Walton Moore* for Cincinnati, New Orleans & Texas Pacific Railway Company and Southern Railway Company.

#### REPORT OF THE COMMISSION.

##### CLEMENTS, *Commissioner*:

Complainant corporation is engaged in the manufacture of roofing material at Carthage, Ohio, about 10 miles from Cincinnati, and this complaint is directed against the present rate of 19 cents per 100 pounds to Nashville on this material. The prayer is for the establishment of a rate of 12½ cents, for reparation, and for mixed carload rate as hereinafter referred to.

Complainant's products are manufactured from dry green felt, the supply of which is drawn from Lockland, Ohio, about 4 miles from Carthage. A rate of 3½ cents per 100 pounds is paid on this raw material to Carthage. By tariff authority the Cincinnati rate applies from Carthage to Nashville. The various products which complainant manufactures are known as one, two, and three ply tarred felt and composition roofing. Roofing paper or single-ply tarred felt is made by saturating one layer of felt with coal tar. Two-ply tarred felt, which is designated in the record as paper roofing, consists of two layers of this saturated felt with a layer of pitch between, and three-ply tarred felt, also called paper roofing, consists of three layers of saturated felt with two layers of pitch between. Composition roofing is manufactured by covering saturated felt with a preparation of asphalt and other ingredients. Complainant also produces sheath paper, which is made of straw pulp, and is laid underneath

the roofing itself. Complainant's products are wound in rolls and placed on end in the car, the rolls being securely braced by long timbers. Inside of each roll of composition roofing is placed a can of nails weighing 1 pound and a pint can of roofing cement used in laying the roof. A wooden plug in either end of these composition rolls holds the nails and cement securely within the roll. The timbers used in bracing each shipment weigh from 500 to 600 pounds per car and the wooden cores in the rolls probably another 500 pounds, and this weight is paid for at the rate on roofing paper. Complainant's products are shipped in mixed carloads, averaging 30,000 pounds, mixed shipments being universally desired by the trade. There seems to be no tariff authority for including nails and cement at the carload rate, and complainant desires that this be authorized, as well as that roofing caps, pitch, tar, and roof coating be included at the mixed carload rate. All the articles enumerated are necessary to the completion of a roof from complainant's products.

Prior to May 1, 1895, there was a commodity rate of 20 cents per 100 pounds on roofing paper, which applied also on printing and wrapping paper. On that date this rate was reduced to 16 cents, but shortly afterwards was advanced to 16½ cents, which rate obtained until October 1, 1907, when it was canceled as to manufactured roofing paper, complainant's commodity. This left the rate of 16½ cents on dry or unsaturated felt, printing, and wrapping paper, but threw manufactured roofing paper into Class A, which represented a rate of 25 cents. This adjustment obtained until March 1, 1909, when a rate of 19 cents on "roofing paper" was established, which rate is still in effect. It is asserted that this rate applies on dry or unsaturated felt, but the record does not clearly show whether this commodity is roofing felt or roofing paper. Southern Classification rates roofing felt in Class A and there is no commodity rate. The 16½-cent rate still applies on printing and wrapping paper. Wrapping paper, it is testified, is worth from \$30 to \$180 per ton and printing paper from \$50 to \$140 per ton. It is contended by complainant that inasmuch as its products are incombustible and absolutely impervious to water the risk of damage is not nearly so great as in the case of wrapping and printing papers and unsaturated felt, which take the 16½-cent rate.

In justification of the rate on wrapping and printing papers defendants rely to a great extent on the rate of 12½ cents from Jeffersonville to Nashville, used in constructing the through rate on paper from Wisconsin mills, which they charge is affected and controlled by competition from the east.

Complainant in its reply brief compares the rate on roofing paper to that on other roofing from Cincinnati to Nashville, as follows: Iron roofing, 15 cents; roofing slate and tile, 13 cents; shingles, 16

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cents. A minimum of 40,000 pounds is applicable on iron roofing and 24,000 pounds on the other kinds referred to.

Complainant also relies upon a comparison of the rates from Ensley, Ala., and St. Louis to Nashville, and the rate from Cincinnati to New Orleans. The rate from Ensley via the Louisville & Nashville, a distance of 210 miles, is 9 cents. Defendants' witnesses testify that no traffic whatever moves or has moved on this rate, for the reason that the raw material is brought from the north to Ensley and the product can not profitably be made at Ensley and shipped to Nashville. The rate from Cincinnati to New Orleans via the Louisville & Nashville, a distance of 925 miles, is 22 cents. St. Louis apparently is complainant's only serious competitor, the rate to Nashville being 20 cents, or only 1 cent more than the rate from Cincinnati to Nashville. The distance from St. Louis to Nashville via the Illinois Central and Nashville, Chattanooga & St. Louis is approximately 350 miles.

Complainant's products vary in value from \$20 to \$50 per ton and are covered by the same rate because from a traffic standpoint it is impracticable to distinguish between them and the rate arrived at is an average rate. The distance from Carthage to Nashville via the Cleveland, Cincinnati, Chicago & St. Louis, and Louisville & Nashville is about 310 miles, and via the Cleveland, Cincinnati, Chicago, & St. Louis; Cincinnati, New Orleans & Texas Pacific; and Tennessee Central, about 410 miles.

Upon the whole record it is our conclusion that 19 cents is a reasonable rate on these products. Defendants interpose no objection to including articles necessary to lay this roofing and are willing to extend the privilege to cement and nails provided these articles are included within the roll. Numerous tariffs filed with the Commission covering different species of traffic allow mixing such as complainant here suggests, and we see no objection to the carriers extending the privilege to this traffic. No order will be made with respect to this feature, but if the practice is permitted it must be specifically and definitely provided for in the tariffs.

The complainant shipped in the aggregate 261,800 pounds between October 1, 1907, and April 23, 1909, upon which a rate of 25 cents per 100 pounds was charged. Reparation will therefore be awarded in the amount of \$157.08, with interest from April 28, 1909, upon the basis of the 19-cent rate, and this rate will be maintained as a maximum for two years in the future. An order will be entered in conformity with these findings.

18 I. C. C. Rep.



No. 2955.

WILLAMETTE PULP & PAPER COMPANY

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

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*Submitted March 28, 1910. Decided May 9, 1910.*

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Rate of 80 cents per 100 pounds actually applied on several shipments of print paper from Sartells, Minn., to Los Angeles, Oakland, and San Francisco, Cal., found unreasonable to the extent that it exceeded 75 cents per 100 pounds.  
— Reparation awarded.

*J. O. Bracken* for complainant.

*Guy V. Shoup* for defendants.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

Between September 3, 1907, and October 14, 1907, complainant caused to be shipped to its order from Sartells, Minn., to Los Angeles, Cal., Oakland, Cal., and San Francisco, Cal., 26 carloads of print paper, aggregating a total weight of 708,148 pounds. A rate of 80 cents was assessed and a total refund of \$354.92 is claimed, based on a rate of 75 cents.

It would appear that from Sartells such shipments had not been previously made. Upon application to the carriers interested, however, complainant was assured that the same rate would be published from this point as from surrounding points from which moved the same commodity. With this in view shipments were made, and it was complainant's understanding that the rate of 75 cents was then in effect. However, it transpired later that such was not the case and a rate of 80 cents was applied. Defendants contend that the complainant could have secured this commodity at other points from which the lower rate applied had it so desired. This is somewhat beside the question. The real question at issue is the reasonableness of the rate charged. A lower rate is now effective from Sartells. No question is made as to its reasonableness, and we do not feel that because of delay on the part of the railroad companies

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interested in agreeing upon the proper divisions and in the publishing of this tariff that the complainant should suffer thereby.

We find that 75 cents per 100 pounds was a reasonable rate to be applied upon the shipments in question. The carriers will be ordered to maintain a rate between Sartells and Los Angeles, Oakland, and San Francisco not exceeding this amount for two years from this date, and to refund to complainant the sum of \$354.92, with interest from November 2, 1909.

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No. 3076.

NATIONAL REFINING COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

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*Submitted April 23, 1910. Decided May 9, 1910.*

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Reparation allowed on shipments of petroleum and its products from Coffeyville, Kans., to Enid, Okla., following *State of Oklahoma v. C., R. I. & P. Ry. Co.*, 15 I. C. C. Rep., 42.

*C. D. Chamberlin* for complainant.

*James L. Coleman* for defendant.

#### REPORT OF THE COMMISSION.

*LANE, Commissioner:*

This complaint, filed January 25, 1910, asks reparation in the sum of \$656.84 on 16 carloads of petroleum and its products, weighing in the aggregate 821,016 pounds, shipped by the complainant via the line of the defendant between December 12, 1907, and January 26, 1909, both inclusive, from Coffeyville, Kans., to Enid, Okla.

Complainant relies on the decision of the Commission in *State of Oklahoma v. C., R. I. & P. Ry. Co.*, 15 I. C. C. Rep., 42, in which it was held that a rate of 33 cents per 100 pounds on petroleum and its products from Coffeyville to Enid was unjust and unreasonable to the extent that it exceeded 25 cents per 100 pounds.

Defendants, answering, allege that payment at the rate of 33 cents was voluntary, made without protest, denies complainant suffered  
18 I. C. C. Rep.

any damage, and states that some of the shipments are barred by the statute of limitations. It also denies the jurisdiction of the Commission to award reparation in this case.

About a month after complainant located its station at Enid it protested against the rate of 33 cents. Subsequently complainant was informed by an official of defendant that the state of Oklahoma had commenced proceedings before the Commission in which this rate was involved. It is testified by complainant that had the state of Oklahoma not made complaint complainant would have done so, and after complaint was so made offered its services to the state in the prosecution of the complaint. One of the officials of the defendant called on complainant and stated that if it had been asked to hold the question of reparation in abeyance pending the decision of the Commission in the *Oklahoma case*, and the facts were as stated, the defendant would, on authority of the Commission, pay the claim. Within a month after the decision of the Commission claim was made against the carrier, but it was declined. Thereupon formal complaint was filed with the Commission.

To maintain a petition before this Commission for the recovery of excessive freight charges it is not necessary that the payment of freight should have been made under protest. *Baer Bros. Mercantile Co. v. M. P. Ry. Co.*, 13 I. C. C. Rep., 329.

No reparation was asked or awarded in *State of Oklahoma v. C., R. I. & P. Ry. Co.*, *supra*. The proceeding was brought on behalf of the citizens of Oklahoma. The state itself had made no shipments. That complaint, however, did not stop the running of the statute as to complainant. It follows that reparation may only be awarded on shipments from February 5, 1908, to January 26, 1909, both inclusive.

From all the facts we are of the opinion that the complainant is entitled to reparation in the sum of \$574.53, with interest from January 26, 1909.

An order will be entered accordingly.

18 I. C. C. Rep.

No. 2806.

C. E. FERGUSON SAW MILL COMPANY .

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY  
COMPANY •ET AL.

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*Submitted April 9, 1910. Decided May 2, 1910.*

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Rate on cypress and yellow-pine lumber from Woodson and Little Rock, Ark., to Memphis, Tenn., of 14 cents per 100 pounds, found to be unreasonable and a rate of 10 cents established for the future.

*C. E. Ferguson* for complainant.

*Martin L. Clardy, James C. Jeffery, M. L. Bell, George B. Rose,*  
and *C. E. Perkins* for St. Louis, Iron Mountain & Southern Railway Company.

*T. S. Buzbee* for Chicago, Rock Island & Pacific Railway Company.

#### REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

This complaint assails as unreasonable the carload rate of 14 cents per 100 pounds on cypress and yellow-pine lumber from Woodson and Little Rock, Ark., to Memphis, Tenn.

Complainant is engaged in the manufacture and sale of cypress and yellow-pine lumber at Woodson, Ark., 17 miles southeast of Little Rock on the valley division of the St. Louis, Iron Mountain & Southern Railway. It also maintains an office at Little Rock. The lines of defendants extend from Little Rock to Memphis, a distance of 132 miles via the short line, which is the Chicago, Rock Island & Pacific Railway, and 148 miles via the St. Louis, Iron Mountain & Southern Railway.

It appears that for many years the Little Rock & Memphis Railway was the only line connecting Little Rock and Memphis. Up to the time when the St. Louis, Iron Mountain & Southern Railway was built into Memphis the published rate on all lumber via the former line was 8 cents per 100 pounds, but most of the lumber moved

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on a special rate of 6 cents, and for a short time there was a special rate of 5 cents. After the Choctaw, Oklahoma & Gulf built from Little Rock west into Oklahoma and absorbed the Little Rock & Memphis Railway it maintained the 8-cent rate except for a brief period, when a rate of 6 cents was in effect. The 8-cent rate was continued in force by the Choctaw, Oklahoma & Gulf until July 15, 1903, and on cypress only until the acquisition of the Choctaw, Oklahoma & Gulf by the Chicago, Rock Island & Pacific Railway Company in 1904, and by the latter company until 1907. On July 15, 1903, a rate of 10 cents was established on pine, which remained in effect until April 16, 1907, when it was advanced to 12 cents. The rate of 8 cents on cypress was carried until March 1, 1907, when it was advanced to 10 cents, and later, April 16, 1907, to 12 cents. The 12-cent rate was made to apply on both pine and cypress and remained in force until February 7, 1909, when it was advanced to 14 cents.

About twenty years ago the St. Louis, Iron Mountain & Southern was extended from Bald Knob, Ark., to Memphis, a distance of 91 miles, giving it a through route from Little Rock to Memphis. It also acquired its valley division, running southeast from Little Rock through Woodson and Pine Bluff to Alexandria, La. As far back as 1898 it maintained an 8-cent rate on all lumber from the territory south of the Missouri state line to Little Rock, and continued that rate in effect until March 1, 1907, except that by an amendment the rate on yellow pine was advanced to 10 cents from Little Rock only. March 1, 1907, cypress lumber was advanced from 8 to 14 cents, Little Rock to Memphis, and yellow pine from 10 to 14 cents.

Concerning rates from Woodson to Memphis, it appears that, effective April 28, 1898, the rate on lumber to Memphis from all points south of Little Rock as far as Alexandria, La., was made 12 cents; that in 1900 there was a reduction to 8 cents on all lumber, from Pine Bluff and Little Rock to Memphis, and that Woodson, though intermediate, took a specific rate on all lumber of 12 cents. In 1903 the rate on cypress, Woodson to Memphis, was made 11 cents, and this rate remained in effect until advanced to 14 cents March 1, 1907, at which time the pine rate was advanced from 12 to 14 cents.

Complainant alleges that under the former rates it had built up a business in Kentucky and Tennessee in cypress shingles and yellow-pine lumber, and that the advance has proven prohibitory, not a carload of its product having moved through the Memphis gateway or to Memphis proper.

The prayer of petitioner is that these advances be declared unreasonable and unlawful, and that the Commission establish reasonable rates.

On March 1, 1907, a general advance was inaugurated, not only from Little Rock and Woodson, but from all lumber-producing territory west of the Mississippi River, to Mississippi crossings, including Memphis. As Little Rock and Woodson are on the extreme northern edge of the zone over which a blanket lumber rate applies, they take the same rate as points almost as far south as the Gulf of Mexico.

The defense in this proceeding is based largely upon the ground that the question raised by complainant is *res adjudicata*. It is contended that the rates involved herein were passed upon and approved by the Commission in *Chicago Lumber & Coal Co. v. T. S. E. Ry. Co.*, 16 I. C. C. Rep., 323, known as the west-of-the-river lumber case.

That case dealt with the adjustment of lumber rates west of the Mississippi River as a whole. The complaint was directed against an advance from 14 to 16 cents to Cairo on lumber destined from the producing zone to points in Central Freight Association territory, and an advance from 16 to 18 cents to St. Louis on lumber destined from and to the same points through the St. Louis gateway. The Memphis rate was not considered in that case, nor were the rates on cypress involved. It is also to be noted that the adjustment of rates in that case was put in force by the carriers on their own initiative and not by order of the Commission, and in that connection we said:

Unless necessary to the correction of rates found to be excessive and unreasonable from a part of the territory, we see no reason, under all the circumstances appearing, for interference in the present adjustment.

This language expressly disclaims any intention of precluding a shipper located within the territory covered by the adjustment from bringing his complaint against particular rates alleged to be unreasonable. If such a complaint is made it becomes the duty of the Commission to investigate the same and determine the reasonableness of the rates assailed. It may be generally true that a system of blanket rates from a producing section is fair and just to all parties concerned, although it necessarily involves rates that are somewhat high for the distance from points on the edge of the blanket nearest the points of destination, but in making such an adjustment the burden rests upon the carrier to provide rates that shall not be unreasonable from any point of origin.

The contention that any change in the rates involved in this complaint will disrupt the established adjustment is hardly a reasonable deduction from the facts disclosed. Little Rock and Woodson have not been included in this adjustment for any considerable period of time. They were, as a matter of fact, for many years on the southern edge of a zone with a rate of 8 cents to Memphis. They were

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subsequently transferred to the northerly edge of a zone extending from the Arkansas River to the Gulf of Mexico, and at approximately the same time the rate from this southern zone was increased. The net result of the readjustment gave to the points in question in rapid succession two material increases in rates which carried them up from 8 to 14 cents, and the record shows that complainant was the principal shipper affected thereby.

As to the impropriety of placing cypress in this zone without due regard to the geographical boundaries of cypress production, we refer to what is said in case No. 2807, concurrently decided.

The following table shows the rates to Memphis, distances, and per-ton-per-mile rates, from points now included in the southern blanket:

*Rates to Memphis.*

From—	Distance.	Rate per 100 pounds.	Rate per ton per mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Little Rock, Ark.....	148	14	19
Woodson, Ark.....	165	14	17
New Orleans, La.....	550	14	5
Fort Smith, Ark.....	314	14	8.9

The following table shows rates in effect until recently from points immediately north of the zone:

*Rates to Memphis.*

From—	Distance.	Rate per 100 pounds.	Rate per ton per mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
McAlamont, Ark.....	141	9	12.7
Moark, Ark.....	140	8	11.4
Galloway, Ark.....	124.5	9	14.4

We are convinced that the present rate on lumber from Little Rock and Woodson is unreasonably high for such a low-class traffic as lumber. No special equipment in the way of cars is required. Lumber may move in open or flat cars, gondola cars, or box cars; it affords a constant business for the roads throughout the year, and is loaded by the shipper and unloaded by the consignee. Lumber is not perishable and therefore does not require rapidity of movement; there is little or no risk incident to its carriage, and in case of accident the damage is insignificant. The loading weight of lumber is equal to or greater than that of a large number, if not most, of the principal commodities transported by defendants.

This 14-cent rate is not in line with other rates to Memphis from adjacent points, there being a 9-cent rate via the Chicago, Rock

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Island & Pacific from Galloway, a short distance east of Little Rock, and until quite recently there was a 9-cent rate from McAlamont, 7 miles from Little Rock on the St. Louis, Iron Mountain & Southern. Under all the circumstances and conditions we are of opinion, and so find, that 14 cents per 100 pounds on cypress and yellow-pine lumber, carloads, from Little Rock and Woodson, Ark., to Memphis, Tenn., is unjust and unreasonable, and that the maximum reasonable rate for the future should not exceed 10 cents per 100 pounds. This rate will furnish, via the short line, per-ton-per-mile earnings of over 15 mills from Little Rock to Memphis, and over 12 mills from Woodson, and would seem to be fair and just in comparison with rates from points north and south of Little Rock and Woodson.

An order will be issued in accordance with the conclusions herein announced.

18 I. C. C. Rep.



No. 2807.

C. E. FERGUSON SAW MILL COMPANY

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.

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*Submitted April 9, 1910. Decided May 2, 1910.*

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Rates on cypress lumber from Little Rock and Woodson, Ark., to points in Oklahoma, Kansas, and Missouri found to be unreasonable in so far as they exceed the rates now in effect from points in the zone extending from Memphis, Tenn., to Wynne, Ark., which rates are prescribed for the future.

*C. E. Ferguson* for complainant.

*Martin L. Clardy, James C. Jeffery, M. L. Bell, George B. Rose, and C. E. Perkins* for defendant.

#### REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

This complaint assails as unreasonable the rates on cypress lumber from Woodson and Little Rock, Ark., to points on defendant's lines in Oklahoma, Kansas, and Missouri.

Complainant is engaged in the manufacture and sale of cypress and yellow-pine lumber at Woodson, Ark., 17 miles southeast of Little Rock, on the valley division of the St. Louis, Iron Mountain & Southern Railway, and it also maintains an office at Little Rock. The lines of defendant extend from Woodson and Little Rock northwesterly into Oklahoma, Kansas, and Missouri.

Complainant alleges that defendant has recently advanced rates on cypress lumber from Woodson and Little Rock to points in Oklahoma, Kansas, and Missouri, over the rates which had been in effect for many years; that said advances are unreasonable in themselves and unjustly discriminatory against Woodson and Little Rock, and in favor of Memphis, Tenn., and other points east of Little Rock. The prayer of complainant is that the rates formerly in effect be restored and reparation made of all sums unlawfully collected.

18 I. C. C. Rep.

It was the purpose of complainant, as stated at the hearing, to place in issue the reasonableness of rates to all points on the Missouri Pacific system in Kansas and Nebraska, but as the only defendant is the St. Louis, Iron Mountain & Southern Railway Company, the lines of which reach only one point in Kansas, Coffeyville, and none in Nebraska, it will be necessary to file a supplemental complaint including other defendants if complainant seeks consideration of rates to points other than those on the lines of defendant.

The president of complainant company testified that his company had engaged in the purchase, manufacture, and sale of cypress lumber on the basis of rates in effect for many years under a tariff applying on "lumber except yellow pine" from Woodson to points west; that cypress rates were the same from a zone which comprehended all stations north of the Arkansas River and south thereof to Pine Bluff, inclusive; that by placing Little Rock and Woodson in the yellow-pine zone, extending from Little Rock to the Gulf of Mexico, and giving cypress the pine rates, the rates on cypress from Woodson to points west were advanced from 2½ cents to certain points to 8 cents to other points; that the rates in the hard-wood tariff have not been changed; that before the advance complained of the lowest rate on cypress to the desired markets was 16 cents, Woodson to Kansas City and other towns in eastern Kansas; St. Joseph, Mo., and Leavenworth, Kans., took a 17-cent rate; another group of towns took a 19-cent rate; another group, 23 cents; another group, 25 cents; and so on up to 36 cents at the western line of Kansas. On September 10, 1908, by a supplement, the tariff was made to read as follows:

Rates named in tariff as amended will apply on lumber, except yellow pine *and cypress*.

The addition of the words "and cypress" took cypress out of the hard-wood tariff and placed it in the yellow-pine tariff. Little Rock and Woodson being south of the Arkansas River came within the yellow-pine zone extending from Little Rock to the Gulf of Mexico, and cypress rates from those points were thereby raised to the yellow-pine rates. In other words, the yellow-pine zone was made a pine and cypress zone.

At the same time rates on cypress from Memphis, Tenn., Helena, Ark., and other towns north of the Arkansas River to points in Kansas formerly taking the 16-cent rate were advanced only 2 cents. The result is that Woodson and Little Rock, with a 24-cent rate on cypress to points in eastern Kansas, are in competition with producing points taking an 18-cent rate though more distantly located from the markets. The Memphis rate is blanketed westerly from the Mississippi River as far as Wynne, Ark. From Wynne the rate

to points in eastern Kansas increases, and in a distance of 98 miles between Wynne and Little Rock it becomes 24 cents. Traffic from points east of Little Rock is routed through Little Rock. After leaving Little Rock and proceeding westward the rate drops off until Fort Smith is reached, where it is 17 cents. There is therefore no attempt to maintain a blanket rate throughout this stretch of 250 miles, but starting with a 24-cent rate from Little Rock to points in eastern Kansas, the rate is graded down to 18 cents for points between Wynne and Memphis, and to the westward until it reaches 17 cents at Fort Smith. The following table compares rates from the Memphis zone to the markets sought by complainant, with rates from Little Rock and Woodson; per ton per mile earnings are also shown:

*Rates on cypress lumber, carloads, in cents per 100 pounds.*

To—	From Memphis, Tenn.			From Little Rock, Ark.			From Woodson, Ark.		
	Rate.	Dis- tance.	Rate per ton per mile.	Rate.	Dis- tance.	Rate per ton per mile.	Rate.	Dis- tance.	Rate per ton per mile.
	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
Branson, Mo.....	18	309	1.10	24	275	1.74	24	293	1.64
Galena, Mo.....	18	329	1.00	24	285	1.62	24	313	1.53
Crane, Mo.....	18	339	1.00	24	305	1.57	24	323	1.49
Stotts City, Mo.....	18	368	.92	24	334	1.44	24	352	1.38
Carthage, Mo.....	18	389	.87	24	355	1.35	24	373	1.29
Muldrow, Okla.....	16	327	.98	18	179	2.00	18	197	1.83
Sallisaw, Okla.....	16	340	.94	18	192	1.87	18	210	1.71
Illinois, Okla.....	16	360	.90	20	212	1.89	20	230	1.74
Fort Gibson, Okla.....	16	382	.84	23	234	1.56	23	252	1.52
Wagoner, Okla.....	16	395	.81	23	247	1.86	23	266	1.73
Sageeyah, Okla.....	16	429	.75	23	281	1.64	23	299	1.54
Delaware, Okla.....	16	459	.69	23	311	1.48	23	329	1.40
Coffeyville, Kans.....	18	477	.71	24	329	1.46	24	347	1.38

For over twenty years cypress has been classed as a hard wood. Witness for defendant testified that the classification of cypress was changed because of its value and on account of its direct competition with yellow pine. Complainant contends that cypress is a factory material and competes with yellow pine for building purposes only to a very limited extent and that the value of Arkansas cypress is less than yellow pine.

The zone covered by the yellow-pine blanket rate, extending from the Arkansas River southward, was defended in case No. 2806, concurrently decided, on the ground that the zone so made includes geographically the entire yellow-pine producing section. The chief justification for a zone system is that it places all producers on the same footing at the market, but no such contention can be made in this case with regard to cypress. Cypress is not given the pine rates because it grows in the same zone with pine. The record shows that the territory producing white cypress west of the Mississippi

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River extends from southeastern Missouri to the Arkansas River and to some distance south of that river, paralleling it to the Mississippi River, and that yellow-pine production sets in at the Arkansas River and extends south to the Gulf of Mexico. There is, therefore, a clear demarcation between the geographical location of white-cypress production and that of yellow pine. A blanket adjustment of rates which ignores so fundamental a principle as the geographical location of production can with difficulty be maintained in the face of a result which compels a producer with a 24-cent rate to compete with a large number of neighboring producers enjoying an 18-cent rate. In fact, we are unable to see that the carriers have made any serious attempt to maintain a blanket system of rates on cypress in view of the wide variance in rates on that commodity in Arkansas. Certainly it is clear that a readjustment of rates on cypress in this case can not be said to interfere with any blanket arrangement properly and fairly constructed.

There are no other complaints from south of the Arkansas River against these advances because the blanket arrangement south of the river does not apply to the important cypress-producing territory north of the river, and the record discloses that the complainant is the principal producer of cypress lumber south of the river and practically the only one to feel the advance from 16 to 24 cents.

An effort was made to justify, on the ground of water competition, much higher rates from Little Rock and Woodson than from Memphis, and while there may be some basis for this contention, it is quite insufficient, in our judgment, to warrant the disparity existing in this case. Water competition perhaps justifies as high rates from Little Rock and Woodson as from Memphis, but this would seem to be its maximum effect, and rates from Little Rock and Woodson so adjusted would yield considerably higher returns for the service performed than are now received on the same rate from Memphis, and higher than the rates voluntarily maintained by the carriers for many years.

Under all the circumstances and conditions we are of opinion, and so find, that the rates on cypress lumber, in carloads, from Little Rock and Woodson to points in Oklahoma, Kansas, and Missouri, located on the lines of the defendant, are unjust and unreasonable, and that the maximum rates for the future between the points named should not exceed the rates set forth in the table following.

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*Rates from Little Rock and Woodson, Ark., in cents per 100 pounds.*

To—	Rate.	To—	Rate.	To—	Rate.
	<i>Cents.</i>		<i>Cents.</i>		<i>Cents.</i>
Pine Top, Mo.....	18	Opal, Mo.....	18	Bluff, Okla.....	18
Melva, Mo.....	18	Bonham, Mo.....	18	Briggs, Okla.....	18
Hollister, Mo.....	18	Aurora, Mo.....	15	Hanto, Okla.....	18
Tie Yard, Mo.....	18	Hoberg, Mo.....	18	Fort Gibson, Okla.....	18
Branson, Mo.....	18	Stotts City, Mo.....	18	Wagoner, Okla.....	18
Gretna, Mo.....	18	La Russell, Mo.....	18	Ross, Okla.....	18
Roark, Mo.....	18	Meigun, Mo.....	18	Inola, Okla.....	18
Reeds Springs, Mo.....	18	Fink, Mo.....	18	Tiawah, Okla.....	18
Galena, Mo.....	18	Forrest Mill, Mo.....	18	Claremore, Okla.....	18
Elsay, Mo.....	18	Pearl Mill, Mo.....	18	Sagecyah, Okla.....	18
Crane, Mo.....	18	Carthage, Mo.....	18	Colagah, Okla.....	18
Hurley, Mo.....	18	Muldrow, Okla.....	16	Talala, Okla.....	18
Browns Spring, Mo.....	18	Hanson, Okla.....	16	Watova, Okla.....	18
Clever, Mo.....	18	Sallisaw, Okla.....	16	Nowata, Okla.....	18
Terrell, Mo.....	18	Mackey, Okla.....	16	Delaware, Okla.....	18
Wilson Creek, Mo.....	18	Vian, Okla.....	16	Lenapah, Okla.....	18
Battlefield, Mo.....	18	Upson, Okla.....	16	Coffeyville, Kans.....	18
Springfield, Mo.....	14	Illinois, Okla.....	16		

An order will be entered accordingly.

As stated hereinbefore, it will be necessary to file a supplemental complaint, naming the Missouri Pacific Railway Company as a party, if it is desired to question the reasonableness of rates to points on its lines.

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No. 2685.  
COLORADO BEDDING COMPANY  
v.  
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY  
ET AL.

ORIGINAL PETITION AND FIRST AMENDMENT.

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*Submitted January 8, 1910. Decided May 9, 1910.*

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Reparation awarded on shipments of compressed cotton from St. Louis, Mo., to Pueblo, Colo.

*G. M. Stephen* for complainant.

*Herbert Hasse* for Chicago, Burlington & Quincy Railroad Company and Colorado & Southern Railway Company.

*A. P. Humburg* for Illinois Central Railroad Company.

*F. C. Dillard* for Union Pacific Railroad Company.

*J. L. Coleman* for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

**COCKRELL, Commissioner:**

This complaint embraces one original and two supplementary petitions, filed July 12, July 27, and September 15, 1909, respectively.

The original and first supplementary petitions, involving 6 less-than-carload shipments of compressed cotton from St. Louis, Mo., to Pueblo, Colo., will be disposed of in this opinion, designated "Original petition and first amendment," and the second supplementary petition, involving 1 less-than-carload shipment of cotton linters from Memphis, Tenn., to Pueblo, Colo., will be disposed of in a separate opinion designated "Second amendment."

The 6 shipments from St. Louis, containing 18 bales, aggregate weight 8,192 pounds, were charged a rate of \$1.67 per 100 pounds and moved between October 10, 1907, and January, 1908. Sixteen bales, weighing 7,152 pounds, were forwarded over the lines of defendants Chicago, Burlington & Quincy and Colorado & Southern railways, and the other 2 bales, weighing 1,040 pounds, moved via the lines of defendants Wabash and Atchison, Topeka & Santa Fe

railways. Complainant asserts that this rate of \$1.67 was unreasonable in so far as it exceeded a rate of 70 cents, which was subsequently established, and reparation is asked for upon that basis.

The defendants admit that the exaction of a \$1.67 rate upon these shipments was caused by an error in publishing the tariff, asserting that the rate they intended to apply was \$1.15, and offer to make reparation on that basis. The complainant, however, insists that the 70-cent rate was reasonable at the time shipments moved, (1) because it was subsequently established from St. Louis; and (2) because it was at the time of movement in force from Helena, Ark., to Pueblo, in the same tariff naming the \$1.67 rate from St. Louis, which involved a haul of 338 miles farther than from St. Louis, claiming that the 70-cent rate applied from Helena through St. Louis, as the defendants were parties to this tariff and the routing was not restricted to any particular line. But it is shown that of the two initial carriers from Helena, the Yazoo & Mississippi Valley was not a party to the tariff, and the St. Louis, Iron Mountain & Southern was a party to the tariff but not to this proceeding, and had a direct and entire haul in connection with the Missouri Pacific, a part of the same system, which would not be through St. Louis. Consequently the route through St. Louis in connection with the defendants would not have been practical and reasonable. Further, the defendants assert that the rate was reduced from St. Louis for the purpose of permitting the carriers leading out of that city to participate in the traffic as well as to permit St. Louis to engage therein in competition with Helena.

Considering all these facts, our conclusions are and we so find that a reasonable charge for the service would have been \$1.15 per 100 pounds, and reparation is awarded against defendants Chicago, Burlington & Quincy and Colorado & Southern in the amount of \$37.19, with interest from December 31, 1907, and against the Wabash and the Atchison, Topeka & Santa Fe in the amount of \$5.41, with interest from February 3, 1908.

Said defendants will also be required to maintain for the future a rate on compressed cotton in bales, less than carload, from St. Louis, Mo., to Pueblo, Colo., not to exceed \$1.15 per 100 pounds. An order in accordance with these conclusions will be issued.

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No. 2685.  
COLORADO BEDDING COMPANY  
v.  
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY  
ET AL.

SECOND AMENDMENT.

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*Submitted January 8, 1910. Decided May 9, 1910.*

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Reparation denied on a shipment of cotton linters from Memphis, Tenn., to Pueblo, Colo.

*G. M. Stephen* for complainant.

*Herbert Hasse* for Colorado & Southern Railway Company.

*A. P. Humburg* for Illinois Central Railroad Company.

*F. C. Dillard* for Union Pacific Railroad Company.

REPORT OF THE COMMISSIONER.

COCKRELL, *Commissioner*:

This amendment involves a shipment of cotton linters from Memphis, Tenn., to Pueblo, Colo., which moved on April 24, 1907, over lines of defendants, Illinois Central, Union Pacific, and Colorado & Southern railroads, and contained 27 bales, weight 15,140 pounds, on which charges were collected September 28, 1907, on basis of rate of \$1.25 per 100 pounds applicable to cotton linters, either compressed or uncompressed. The complainant submits that a just and reasonable rate for this service would have been 96 cents per 100 pounds, which was the combination rate on compressed cotton linters in effect at time of movement via the St. Louis, Iron Mountain & Southern and Missouri Pacific system through Wynne, Ark., a competing and entirely different route. Via this route the rate on uncompressed cotton linters was \$1.21 per 100 pounds. The shipment was shown on bill of lading and expense bill only as cotton linters and the complainant's witness at the hearing could not say whether it was compressed or uncompressed. A copy of telegram, dated January 8, 1910, is in the record.



1909, from the Illinois Central's local freight agent in Memphis to his general traffic manager, submitted by counsel for defendant, states:

My records show cotton linters covered by my (to Council Bluffs, Iowa) waybill 30186, April 25, 1907, uncompressed. Unable to have shippers advise.

The determination of this case, however, does not hinge upon this point.

We have uniformly held that the existence of a lower rate via a competing route does not of itself establish the unreasonableness of the rate actually charged. Complainant produced no evidence showing that the rate charged was excessive for the service performed. Such rate applied over three separate lines and a route approximately 500 miles longer than the Iron Mountain-Missouri Pacific route over which the lower rate was in effect.

As the shipment was delivered to the Illinois Central road consigned to Pueblo, without any routing instructions, written or verbal, no obligation under the act rested upon that defendant to decline the shipment because of a lower rate via a competing line, the Iron Mountain-Missouri Pacific system.

Under the circumstances we can not find that the rate complained of was unreasonable for the service performed, or that complainant is entitled to reparation on this shipment. The complaint will be dismissed.

18 I. C. C. Rep.

No. 2836.

ANDY'S RIDGE COAL COMPANY ET AL.

v.

SOUTHERN RAILWAY COMPANY ET AL.

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*Submitted March 10, 1910. Decided April 4, 1910.*

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Complaint involves relative rates on coal from the Coal Creek field in Tennessee to Nashville, Tenn., Carolina territory, and Georgia and Florida territory, as compared with rates on coal from the Apalachia field, in Virginia, to the same destinations; *Held*, That the present rates from the Coal Creek field to Nashville and to the Georgia and Florida territory unduly discriminate against complainants, but that the contention of complainants for an increase in the differential from the Coal Creek field through Morristown to the Carolina territory must be denied.

*Webb & Baker* for complainants.

*C. B. Northrop* for Southern Railway Company.

*A. A. Phlegar* for Virginia & Southwestern Railway Company.

*J. N. Powell* for Carolina, Clinchfield & Ohio Railway.

*W. G. Dearing* for Louisville & Nashville Railroad Company.

*J. F. Bullitt, E. K. Bachman, D. D. Hull, jr., and W. A. Glasgow, jr.*, for Stonega Coke & Coal Company, Virginia Coal & Iron Company, Black Mountain Coal Land Company, and Virginia Iron, Coal & Coke Company, interveners.

#### REPORT OF THE COMMISSION.

*PEOUTY, Commissioner:*

This proceeding involves relative rates on coal from the Coal Creek field, in the state of Tennessee, and what is designated in this record as the Apalachia field, in the state of Virginia. The complainants operate mines in the Coal Creek field and complain that the rates made by the Southern Railway and its connections from the Apalachia field unduly favor that field as against their own operations.

Generally speaking, the mines in the Coal Creek field have been longer operated than in the Apalachia field, and for this reason the  
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cost of bringing the coal to the surface is somewhat greater. The veins in the Coal Creek region are generally thinner than in the Apalachia field, and the roof is poorer, requiring a much greater amount of timbering to support it. The mines in the Apalachia field are equipped with more modern appliances, and this seems to be largely for the reason that, owing to the thickness and slope of the veins in the Coal Creek field, such machinery can not be used to good advantage.

The coal produced in the Coal Creek field is sold entirely for steam purposes. The Apalachia field produces both steam and domestic coal. Its coal is also, for the most part, adapted to coking, which renders it possible to screen the product for domestic use and coke the slack. This ability to sell for a variety of uses enables operators in the Apalachia field to secure greater continuity of operation than is possible in the Coal Creek field.

The general result is that the cost of producing steam coal in the Apalachia field is from 25 to 35 cents per ton less than the cost of producing steam coal in the Coal Creek field. The two coals are of about the same quality and sell for the same price for fuel purposes, with a slight advantage, possibly, in favor of the Apalachia field.

What is termed in this record "the Apalachia field" is really composed of three distinct fields, known properly as Black Mountain, Apalachia, and Tom's Creek. The distance from the Black Mountain field to Apalachia, which is a station upon the Virginia & Southwestern Railway, is about 23 miles. The distance from the Tom's Creek field to Apalachia is slightly in excess of 23 miles. The mines in the Apalachia field proper lie in close proximity to Apalachia itself.

There was considerable difference of opinion as to the fair average gathering distance of the mines in the Apalachia field from Apalachia. The bulk of the tonnage is produced in the immediate vicinity of Apalachia itself, and it seems probable that an average gathering distance from these three fields to Apalachia would be 12 miles. The average gathering distance from the Coal Creek mines to Coal Creek station is about 5 miles. In stating distances, therefore, there has been added 12 miles to the distance from Apalachia station and 5 miles to the distance from the station Coal Creek.

Rates to three different markets of consumption are involved: First, Nashville, Tenn.; second, Carolina territory; third, Georgia and Florida territory.

1.

The Virginia & Southwestern Railway, which is a subsidiary line of the Southern Railway through ownership of its entire capital stock, but which is independently operated, extends from Apalachia to

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Bluff City upon the Southern, and coal from the Apalachia field to Nashville would pass over the Virginia & Southwestern to Bluff City and thence over the Southern, through Knoxville and Harriman Junction, to a connection with the Tennessee Central, by which it is transported to Nashville. The distance via this route is 431 miles and the rate \$1.45.

The Coal Creek field lies just north of the Southern Railway, between Knoxville and Harriman Junction, the distance from Coal Creek to the main line of the Southern being but 12 miles. From Coal Creek to Nashville over the Southern and Tennessee Central the distance is 208 miles, and the route for 200 miles of this distance is identical with that taken by coal from the Apalachia field. The rate of the Southern Railway from Coal Creek to Nashville is \$1.25. The complainants insist that the Southern and its connections unduly discriminate against them in charging a rate of \$1.25 from Coal Creek, when they only charge \$1.45 from Apalachia.

The Southern Railway excuses its rate from Apalachia upon the plea that it is forced to establish that charge by its competitor, the Louisville & Nashville. This latter line runs from Apalachia to Nashville, a distance of 408 miles. The traffic representative of that company, who was present at the hearing, was inquired of why his company established this rate \$1.45, and replied that it was forced to do so by the rate of the Southern Railway.

The city of Nashville draws its coal supply from fields which are nearer than either Coal Creek or Apalachia, but it appears that at some times and under unusual conditions coal is transported from both these fields to that market.

Differentials between competing coal mines to various markets of consumption can not be established upon distance alone; nor can one case be safely made the precedent for another. Much depends upon competitive conditions, and each situation must be considered and disposed of by itself. From a consideration of all the facts and circumstances surrounding this situation, we are of the opinion that the Southern Railway and its connections do unduly discriminate against the complainants in maintaining from the Coal Creek field to Nashville the present relation of rates, and we are further of the opinion that no rate should be maintained from Coal Creek which is not at least 45 cents less than the rate correspondingly maintained from Apalachia.

While, however, it has seemed proper to note the discrimination which we find to exist, the Commission is of the opinion that it has no jurisdiction to require by its order a discontinuance of that discrimination, inasmuch as the rate used by the complainants is a state rate, the movement from Coal Creek to Nashville being entirely within the state of Tennessee.

## 2.

Coal from the Apalachia field for Carolina territory moves south by the Virginia & Southwestern to Bluff City, thence southwesterly by the Southern to Morristown, thence southeasterly by the Southern to and through Asheville, N. C.

The Coal Creek field lies northwest of Knoxville and the movement from that field is southeast to Knoxville, thence northeast to Morristown, thence southeast to Asheville, the entire movement being over the Southern Railway.

It will be seen, therefore, that coal from these two fields moves from Morristown to this Carolina territory via the same route. The distance from the Apalachia field to Morristown is 171 miles; from the Coal Creek field 78 miles, so that in point of distance the Coal Creek field has the advantage by 93 miles. The cost of the haul, owing to grades, curvatures, etc., from Apalachia to Morristown is greater per mile than from Coal Creek to the same point.

The Commission passed upon this differential between these fields to Carolina territory in *Black Mountain Coal & Land Co. v. Southern Railway Co.*, 15 I. C. C. Rep., 286. The Coal Creek field was not represented or heard in that proceeding, and the complainants now ask the Commission to increase the differential which it then fixed at 25 cents per ton.

Since the decision of that case certain transportation changes have occurred which materially modify the situation. The Virginia & Southwestern has constructed and is about opening for operation a cut-off from Gate City, Va., to Bull's Gap, Tenn., by which the distance from Apalachia to Morristown will be shortened 60 miles and some of the severest grades and curves avoided. To-day, therefore, the distance from Apalachia to Carolina territory is but 33 miles in favor of Coal Creek, and the cost of operation between Apalachia and Morristown is less against Apalachia than it formerly was.

The Carolina, Clinchfield & Ohio Railroad has been constructed from the Dante field, which lies just east of the Tom's Creek field, south, crossing the Virginia & Southwestern at Speers Ferry, the Southern at Johnson City, and at Marion, the Seaboard Air Line at Bostic, and the Charleston & Western Carolina and the Southern at Spartanburg. The distance via this route from Dante to practically all points in Carolina territory is less than from Coal Creek via the Southern.

The coal in the Dante region is similar to that in the Apalachia field, being, if anything, somewhat superior. The Carolina, Clinchfield & Ohio Railroad has been constructed at very great expense and in the most approved manner. Its grades are extremely low, its curvatures comparatively slight, and its entire construction of the

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most substantial character. There are few roads in the whole United States upon which a locomotive of given rating can handle a larger gross tonnage than over most of the distance from Dante to Spartanburg.

It would seem evident that the Apalachia field must have the same rate into Carolina territory as the Dante field, if that territory is not to be occupied by the latter field; and when it is remembered that the distance from Dante is no greater than from Coal Creek to all this territory, and that the distance from Apalachia is now but 33 miles greater, owing to the cut-off, it is evident that the Commission can not, by reason of distance or cost of service, increase the differential which was established in the *Black Mountain case*.

The complainants show that they formerly sold largely in Carolina territory; that of late their sales there have been much diminished, and that they will, upon the present differential, in the near future, be entirely excluded from that market. But if this is so, it must be because the cost of production in the Coal Creek field is greater than that in the Apalachia or Dante fields, and this Commission, in determining whether the Southern Railway and its connections unduly discriminate in their transportation charges from these competing mines to a common market, can not undertake to equalize differences in cost of production either natural or artificial.

The contention of the complainants for an increase in the differential through Morristown must be denied.

### 3.

The remaining and most difficult question relates to the differential to Georgia and Florida territory.

The route from Apalachia into this territory is via the Virginia & Southwestern to Bluff City, thence via the Southern through Knoxville to Atlanta and various points beyond. From Coal Creek the movement is through Knoxville and over the same lines of the Southern to Atlanta and beyond. It will be seen, therefore, that the movement from Knoxville is in both cases identical.

The present distance from the Apalachia field to Knoxville is 213 miles; when the cut-off is in operation this will be reduced to 153 miles. The distance from the Coal Creek field to Knoxville is 36 miles, so that Coal Creek has, in all cases with respect to this territory, an advantage in distance of 119 miles.

The present rate from Coal Creek to Knoxville is 60 cents, from Apalachia \$1.40, or an advantage of 80 cents in favor of Coal Creek. The distance from Coal Creek to Atlanta is 259 miles, from Apalachia 378 miles, the rate from Coal Creek \$1.35, from Apalachia \$1.60,

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or a differential of 25 cents. The complainants insist that the differential at Atlanta ought to be nearly as great as the present differential at Knoxville.

The short-line distance from both the Coal Creek field and the Apalachia field to most points in Georgia and in Florida is via Knoxville through Atlanta, but to some points upon the northeastern boundary of Georgia and so down the Atlantic coast, the short-line distance from the Virginia field would be made via a connection with the Carolina, Clinchfield & Ohio Railroad. This road also gives to the Dante mines a line to these same points which is not much greater than from Coal Creek via the Southern through Knoxville; but to the greater portion of Georgia and Florida territory the distance from both Dante and Apalachia exceeds that from Coal Creek by more than 100 miles.

The complainants urge that the present differential to Atlanta deprives them of the benefit of their location. The distance from the Coal Creek field is 259 miles. The advantage in distance to that field as against the Apalachia field is 119 miles; this difference in distance ought, the complainants urge, to entitle them to a greater advantage than 25 cents.

It has been already said that these differentials can not be established upon distance alone. A fair profit in the mining of coal was said to be 10 cents per ton. A permanent advantage in the freight rate of 15 cents per ton, other conditions being equal, gives to the favored mine the market. An attempt, therefore, to apply a strictly mileage scale to relative rates from different mines would practically eliminate all competition.

In determining these differentials we must consider the interest of the consumer as well as the producer. Rates should be so adjusted as to permit the widest possible competition. The user of steam coal at Atlanta should be given the privilege of buying both at Coal Creek and Apalachia, and Dante, if that can fairly be done.

Coal rates are usually highly competitive. In the present instance, not only the fields which have been referred to, but the Alabama fields, the Chattanooga field, other fields in Tennessee north of Coal Creek, all desire to sell in Atlanta. The differentials from these different mines are the outgrowth of years of experiment and ought not to be disturbed by us unless we are certain that justice requires it.

The defendants urge that we ought not to order the Southern Railway and its connections to change this differential at Atlanta because that company has no power to maintain a different differential, and it would be unjust to require of it an impossibility. Coal from some portions, at least, of the Apalachia field can move to Atlanta without

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being transported any portion of that distance by the Southern Railway. If this line were to insist upon maintaining the same differential which now exists at Atlanta and the Southern were compelled to establish a higher differential, the only result would be to force the Southern to withdraw entirely from business from Apalachia to Atlanta.

The distance from Dante to Atlanta via the Carolina, Clinchfield & Ohio, the Charleston & Western Carolina, and the Seaboard Air Line is 461 miles, the rate \$1.60. We can not assume that if this Commission were to express the opinion that the rate from Apalachia to Atlanta should be relatively higher than the present rate from Coal Creek to Atlanta, these lines would persist in reducing this rate, which is already low, for the express purpose of defeating our order.

Upon a view of the whole situation we are of the opinion that the present differential between Coal Creek and the Apalachia field to Atlanta is somewhat too small and that the difference between the rate from the Apalachia field and the Coal Creek field ought not to be less than 35 cents. The advent of the Carolina, Clinchfield & Ohio changes the distances to some points in Georgia and Florida, and may require a regrouping of that territory. We shall, therefore, in this case, confine our order to Atlanta, relying upon the defendants to make the proper adjustments, if any are required, at other points in the so-called Georgia and Florida territory.

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No. 1279.

OCHELTREE GRAIN COMPANY

v.

TEXAS &amp; PACIFIC RAILWAY COMPANY ET AL.

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Submitted March 22, 1910. Decided May 2, 1910.

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On a carload of corn shipped from Ninnekah, Okla., to Lettsworth, La., a combination rate of 45 cents was charged, which exceeded by  $13\frac{1}{2}$  cents the through rate to New Orleans plus the arbitrary of 2 cents customarily applied on shipments to Lettsworth and points in that territory. Reparation awarded.

*Charles West* for complainant.

*Thomas J. Freeman* for Texas & Pacific Railway Company.

*M. L. Bell* and *A. B. Enoch* for Chicago, Rock Island & Pacific Railway Company.

## REPORT OF THE COMMISSION.

*HARLAN, Commissioner:*

During December, 1905, a carload of corn, weighing 39,940 pounds, was forwarded by the complainant from Ninnekah, then in Indian Territory, now the state of Oklahoma, consigned to its order with directions to notify a customer at Lettsworth, in the state of Louisiana. There was no through rate in effect, and charges to the amount of \$179.73 were collected at a combination rate of 45 cents per 100 pounds. The gist of the complaint is that these charges were unreasonable and excessive to the extent that they exceeded  $29\frac{1}{2}$  cents per 100 pounds.

The defendant pleaded the limitation of the statute in bar of the complaint on the ground that it was filed more than one year after the passage of the amendatory act of June 29, 1906, although within two years after the cause of action accrued; and the complainant, being under the impression that it was barred by the proviso of section 16 to the effect that "claims accruing prior to the passage of this act may be presented within one year," agreed at the hearing before an examiner that his complaint might be dismissed. When the examiner's report was filed the Commission called the attention of the complainant to its ruling of December 2, 1907, as follows:

Claims filed with the Commission since August 28, 1907, must have accrued within two years prior to the date when they are filed, otherwise they are barred

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by the statute. Claims filed on or before August 28, 1907, are not affected by the two years' limitation in the act.

The case was thereupon set down for further hearing and testimony was offered by the defendants in support of the reasonableness of the rate of which complaint was made. The petitioner did not appear.

We can not be expected to supervise the conduct of cases before us to the extent of reminding the parties of the necessity of following up their complaints, and we might fairly dismiss this complaint for lack of diligent prosecution. *Producers' Pipe Line Co. v. St. L., I. M. & S. Ry. Co.*, 12 I. C. C. Rep., 186. Nevertheless we feel that it has merit, and we have therefore examined the record with some care.

Lettsworth, the point of destination, is near Baton Rouge, and with regard to movements from Oklahoma is therefore a less distant point than New Orleans. At the time of the movement the rate to New Orleans from Ninnekah under a tariff published by the Rock Island lines was 29½ cents per 100 pounds. The defendants and other lines serving Oklahoma seem to have provided more or less generally in their tariffs for the application on traffic to Lettsworth of a 2-cent differential over New Orleans. If this differential had been available for use in connection with the rate of 29½ cents from Ninnekah to New Orleans, the through charge on this movement from Ninnekah to Lettsworth would have been 31½ cents per 100 pounds. We can not verify the 45-cent rate actually charged. Before the shipment reached destination, on January 1, 1906, the defendants made legally applicable from Ninnekah to Lettsworth a through rate of 29 cents per 100 pounds, made up by adding an arbitrary of 2 cents to the New Orleans rate. Subsequently the differential was increased to 3 cents, making a through charge of 30 cents per 100 pounds, which has remained continuously in effect until the present date.

Upon all the facts, the Commission finds that the rate applied and the charges collected were excessive and therefore unlawful to the extent of 13½ cents per 100 pounds, and that a reasonable rate for the movement would have been 31½ cents per 100 pounds. The carload minimum weight is 40,000 pounds, and on the basis of 31½ cents the charges would have been \$126. It follows that the complainant is entitled to reparation in the sum of \$53.73, with interest from January 13, 1906. Under all the circumstances, we deem it unnecessary to require the future maintenance of the rate now in effect. The Chicago, Rock Island & Gulf Railway Company, which participated in the movement, is not a party herein, and could not now be brought in, as the limitation has run against it. But we do not deem this a fatal defect in the record. *Morti v. C., M. & St. P. Ry. Co.*, 13 I. C. C. Rep., 513. An order will be entered accordingly.

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No. 2903.

TIOGA COAL COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY  
ET AL.

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*Submitted March 8, 1910. Decided May 10, 1910.*

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Demurrage charges collected on one box-car loader shipped from Ottumwa, Iowa, to Tioga, Colo., were without warrant of tariff authority and therefore wrongfully imposed. Reparation awarded.

*O. W. Durbin and Fred. Williams* for complainant.

*E. N. Clark and T. L. Philips* for Denver & Rio Grande Railroad Company.

*M. L. Bell and A. B. Enoch* for Chicago, Rock Island & Pacific Railway Company.

#### REPORT OF THE COMMISSION.

##### LANE, Commissioner:

On November 13, 1907, complainant shipped over the lines of the defendants from Ottumwa, Iowa, to Tioga, Colo., one box-car loader. The shipment weighed 24,000 pounds, and no complaint is made of the charges exacted for the transportation. Tioga is a prepay station on the Denver & Rio Grande south of Pueblo, Colo. The shipment was billed through from Ottumwa to Tioga, with charges to be collected of complainant on delivery. On arrival of the car at Pueblo the Denver & Rio Grande refused to receive it because charges had not been prepaid. The car remained at Pueblo until \$17 in demurrage had accrued, when it was forwarded, and complainant paid the freight charges and the demurrage at destination. This proceeding is brought to secure an award of reparation for the amount of the demurrage charges on the allegation that these charges did not lawfully accrue to the Missouri Pacific Railway to which they were paid.

Tariffs of the Missouri Pacific effective at the time this shipment moved did not contain any provision authorizing the collection of

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demurrage on a carload shipment held in transit because consigned to a prepay station on a connecting line on which freight charges were not prepaid.

The facts in this case bring it within the principles announced in the case of *Munroe & Sons v. M. C. R. R. Co.*, 17 I. C. C. Rep., 27, and for reasons therein given we hold that the demurrage charges in this case were without warrant of tariff authority and therefore wrongfully imposed by the Missouri Pacific. An order for reparation in the sum of \$17, with interest, will be issued against that carrier in favor of complainant.

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No. 1621.

E. E. SAUNDERS AND T. E. WELLES, DOING BUSINESS AS  
E. E. SAUNDERS & COMPANY,

v.

SOUTHERN EXPRESS COMPANY.

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*Submitted April 13, 1909. Decided January 10, 1910.*

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1. For many years the fish dealers of Pensacola, Fla., and Mobile, Ala., have been strong competitors in the Alabama markets, the defendant's express rates from both points to those markets having been the same, although the mileage from Pensacola in most instances is less. On September 16, 1907, the Alabama Railroad Commission, against the defendant's protest, reduced the rates from Mobile about one-half, the rates from Pensacola remaining unchanged.
  2. Upon general principles of comity the action of a state commission in fixing rates on state traffic must be treated with all due respect, but this Commission has never felt itself bound to accept a state-made rate as a necessary measure of an interstate rate. Without criticising the state commission rates from Mobile, this Commission, in the light of the record and its own investigations, finds itself unable to accept the Alabama rates as a fair and reasonable basis for fixing the defendant's rates to the same points from Pensacola.
  3. The defendant is one concern and one instrument of commerce operating across the invisible lines that separate the several states in its territory from one another. Its obligations as a common carrier are legitimately fulfilled only when it serves its whole constituent public upon substantially similar terms when the transportation conditions are substantially
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similar; the carriage of traffic by a common carrier for one set of shippers at less rates than it carries the same traffic for a like distance under substantially similar circumstances and conditions for another set of shippers is in contravention of fundamental right and justice; but the discrimination against Pensacola resulting from the state-made rates from Mobile is a situation that the Commission finds it difficult to remedy under existing statutes.

4. Whether the Congress may constitutionally control the rates exacted on state traffic by interstate carriers is suggested as a question of public interest and of public policy, but is not a matter that may profitably be discussed by the Commission in this proceeding.

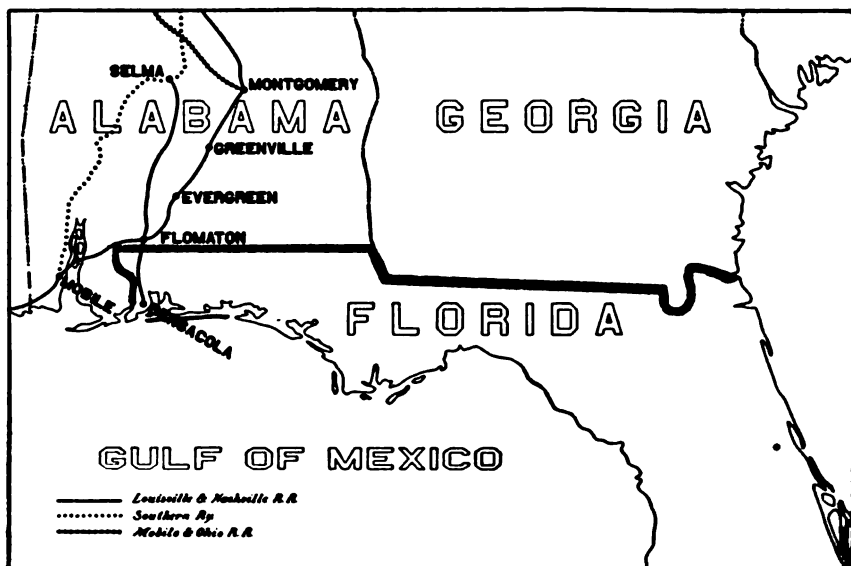
*George T. Morgan* for complainant.

*McDaniel, Alston & Black* for defendant.

#### REPORT OF THE COMMISSION.

**HARLAN, Commissioner:**

As will be seen from the accompanying map, the northern boundary line of the state of Florida extending west from the Atlantic Ocean



completely cuts off the state of Georgia from the Gulf of Mexico, and leaves to the state of Alabama a very narrow shore on that important highway of commerce. At the extreme west end of Florida lies the city of Pensacola, fronting upon a good harbor which has been improved by the expenditure of public funds. Upon an arm of the gulf to the west and slightly to the north is the city of Mobile, in the state of Alabama. The two communities with substantially equal natural advantages, are but 54 miles apart in a direct line, and they are active competitors for the commerce that moves over the Gulf of Mexico.

It is the fish traffic to Birmingham, Montgomery, Selma, Greenville, Evergreen, and other Alabama points that is involved in this controversy. From the rather extensive record now before us it appears that for some years Pensacola has enjoyed a substantially larger market for its fish than has Mobile. The greater success of its dealers has been due, in some part at least, to their better fishing equipment and to their more active efforts to extend their sales. Until the rate changes hereinafter referred to were made they seem practically to have controlled the distribution of fish in Alabama and to the north. One of the means used to attain these ends was the gathering together of a large fleet of swift fishing vessels and the employment of auxiliary boats to relieve them promptly of their fish catches. These methods are said not to have been adopted at Mobile. The result is that fish are brought into Pensacola in prime condition, and this contributes to the large sales enjoyed by Pensacola. Moreover, a great many more fish are caught there than at Mobile or New Orleans. It is said, indeed, that Pensacola sells fish at both those points, a fact indicating that the conditions, whatever they may be, are such as to give Pensacola an advantage over Mobile as a general fish market.

Another advantage that Pensacola has as compared with Mobile is that its short-line haul is from 10 to 15 miles less to many Alabama points than the mileage from Mobile.

It is not to be supposed that these advantages at Pensacola escaped the attention of the railroad commission of Alabama when, on September 15, 1907, it had under consideration the rates on fish from Mobile to the fish-consuming points in that state. It is indeed asserted in the brief of counsel for the defendant that the extensive reduction in rates then made by the state commission was not based on any demand on the part of fish dealers at that point or for the purpose of relieving the fish traffic out of Mobile from oppressive rates. It is also said that no Mobile fish dealer appeared at that hearing or at any other hearing when the Alabama fish rates were involved, and it is intimated that the reduction was made in pursuance of a policy to secure Alabama territory to Alabama dealers to the exclusion of outsiders.

The defendant express company operates generally over the rail lines east of the Mississippi River and south of the Ohio. Being one concern, with the single object of moving express matter offered to it for carriage, it is natural to find that for many years preceding the reduction made by the state commission in the local Alabama rates the defendant endeavored to serve Mobile and Pensacola on the same terms. As a common carrier it rested under the general obligation, regardless of state lines, to serve all its shippers on substantially

similar terms when the conditions were substantially similar; and, the general transportation conditions being the same out of Mobile and Pensacola, the defendant, for many years and apparently to the satisfaction of fish dealers at both places, maintained the same rates on fish from Mobile as from Pensacola. These rates, taking Birmingham as a fairly typical point, were \$1 per 100 pounds and \$1.75 per sugar barrel containing 200 pounds of fish, ice to the amount of 25 per cent of that weight being carried free of charge. These rates are still in effect from Pensacola. But on September 15, 1907, the state commission established a mileage scale under which the rate on fresh fish from Mobile to Birmingham was reduced to 55 cents per 100 pounds. No specific sugar-barrel rate to Birmingham was fixed by the state commission; but as fish are ordinarily shipped both from Mobile and Pensacola in that form, the practice seems to have arisen at Mobile of applying the 100-pound rate on an estimated weight for the sugar barrel that gives a sugar-barrel rate of \$1.32, although under a peculiar icing rule established at the same time the shipper may manipulate these rates to his further advantage by increasing the weight of the fish in the barrel and diminishing the amount of ice which is carried free of charge.

When the new rates from Mobile, which were made applicable also to several other articles such as butter and poultry, were put in effect the fish dealers at that place were not slow to make known to retail dealers and consumers that the cost of transportation from Mobile was materially less than from Pensacola. We find in the record a letter in which a Mobile fish dealer advised his patrons that "our snap-pers at 6½ cents are cheaper to you than Pensacola's at 6 cents, as our rates of express are only half those of Pensacola." While the bulk of the fish traffic from both points has heretofore been carried as freight, and the defendant insists that the business of the complainant has not suffered materially as the result of this discrimination in rates in favor of Mobile, we think the record fairly shows that the volume of fish moving by express from Pensacola has sensibly diminished since the lower rates were made effective from Mobile. On the other hand, the shipments from Mobile have largely increased.

In some minor particulars, such as the transfer of Pensacola shipments at Flomaton, there are differences in the service rendered by the defendant to Mobile and Pensacola shippers, but we do not regard these matters as having any special weight or materiality in this connection. Two further facts, however, are disclosed by the record and must be mentioned before the case may be said to be fully stated:

1. The defendant asserts that it protested against the action of the state commission in reducing its rates out of Mobile; that it asked for a rehearing; that it had a petition pending before the state com-

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mission at the time the complaint was filed here alleging that the rates fixed were unduly low and did not afford just remuneration for the service and produced a discrimination against Pensacola. In that petition, which seems to have been denied, it asked for a further revision of the rates or, as an alternative, that the whole matter be referred to this Commission for consideration and action. The defendant insists, therefore, that the rates from Mobile were not made effective by it voluntarily; that they are unjust and discriminatory; and that it has done all in its power to have the state commission modify its order.

2. The complainant's purpose in instituting this proceeding was to bring to our attention the discrimination in the defendant's rates as between Pensacola and Mobile. Upon a careful examination of the complaint we do not find that the petitioner intended to assail the reasonableness of the defendant's rates out of Pensacola when considered in and of themselves. On the contrary, the prayer of the complaint in so many words is that the Pensacola rates are unreasonable only when compared with the defendant's rates to the same points from Mobile. Counsel for the complainant opens his brief by stating that the purpose of the complaint is to compel the defendant to "so adjust its rates on fresh fish as to avoid the discrimination now existing between" Mobile and Pensacola.

Notwithstanding the fact that the complainant tenders the alleged discrimination as the sole issue in the proceeding and does not challenge the reasonableness of the Pensacola rates, we have thought it well to make some investigation of those rates with a view to gathering some impression as to whether or not they are in fact excessive. The tariff in which the rates appear was before the Commission in *Bannon v. Southern Express Co.*, 13 I. C. C. Rep., 516, where the reasonableness of the rates on fish to St. Louis from Haines City, in the state of Florida, was questioned. After a careful examination of the record the complaint was dismissed, and it was held that a rate of \$6 per sugar barrel of 200 pounds of fish was not an unreasonable express charge between those points. The service of an express company has been said in reality to be not so much a service of transportation as of collecting and delivering and safeguarding express matter in transit; it has also been said that what is paid specifically for the transportation of commodities handed over to express companies is not the charge collected by the express companies but the payment, ordinarily of 50 per cent of the express revenues, made by the express companies to the railroad companies. From that point of view it is clear that the rates from Pensacola to the Alabama points in question are relatively lower than the express rate to St. Louis in the case cited. Moreover, as heretofore stated, those rates have been



in effect for many years without objection. They are not even objected to in this complaint except as they result in a discrimination against the fish dealers of Pensacola when considered in connection with the Mobile rates to the same points. Then, too, it must not be forgotten that if the rates from Pensacola to the Alabama points are changed a modification of the whole schedule of interstate fish rates from that point would seem to be required. It should be added that the standard barrel when packed with fish and ice weighs 250 pounds and the freight rate on the gross weight from Pensacola to Montgomery is \$1.25, or only 25 cents less than the express rate on the net weight from the same point. That is also the difference between the freight and express rates to Selma. The express rate to Evergreen is actually 28 cents less than the freight rate, as we are advised by the record.

In what is here said we are not to be understood as justifying the Pensacola rates to Alabama points. As heretofore stated, the reasonableness of such rates is not in issue before us. But from our examination in *Bannon v. Southern Express Co. supra*, and in this case, of the fish rates from this general territory, we may say with some confidence, upon our present information in the matter, that no reduction that we could fairly require the defendant to make would suffice to do more than merely to modify the discrimination in the defendant's rates of which complaint is made. The discrimination would not be eliminated. Besides being a perishable commodity that must have, and is given, the benefit not only of an expedited passenger-train service but of quick handling and prompt delivery, the melting of the ice and the leaking of the barrels add to the cost of the carriage and make the movement of fish an unsatisfactory traffic. And yet while the defendant's general merchandise rate on express matter between Mobile and Birmingham is \$1.20, its fresh-fish rate under the order of the state commission is but 55 cents per 100 pounds. The less-than-carload freight rate of the Louisville & Nashville on fresh fish between those points is 40 cents per 100 pounds. Other rate exhibits offered in evidence by the defendant tend to show (1) that the Alabama express rates on fish are less than the Mobile & Ohio freight rates on fish between points in Alabama and in some cases approximately only 50 per cent of its freight rates; (2) that fresh-fish rates in South Carolina, Arkansas, Mississippi, and Virginia are very much greater than the Alabama rates; (3) that the Florida fish mileage scale ranges greatly above the Alabama rates and yields rates in most cases twice as high; (4) that only in a few instances are the Alabama express rates on fish as much as 150 per cent of the interstate freight rates on fish in the southeastern territory; and (5) that the Alabama express rates on fish are not usually as much as half the rates of

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express companies in adjoining territory. We have not verified the statements of these exhibits in detail. But we conclude upon the evidence now before us and upon a rather wide knowledge of fish rates, that the rates out of Mobile are lower than we should feel justified in requiring the defendant to maintain on fish shipments out of Pensacola to the same points.

While upon general principles of comity the action of a state commission in fixing a rate on state traffic must be treated with all due respect, this Commission has never felt itself bound to accept a state-made rate as a necessary measure of an interstate rate. In *Hope Cotton Oil Co. v. Texas & Pacific Ry. Co.*, 12 I. C. C. Rep., 265, 269, we said:

While a rate fixed by a state statute or a state commission is naturally and properly entitled to respectful consideration, it has no greater sanctity, as applied to interstate traffic, than a rate established by a railroad company, and we should not hesitate, upon proper evidence that a rate so established would be unjust either to a carrier or to a shipper, to refuse to accept it as a basis for fixing an interstate rate.

That rule has been followed in other cases and must necessarily always be the basis of our action when dealing with interstate rates. To depart from that course would amount to an abandonment of our duties under the law and would result in the fixing of interstate rates by state commissions. We do not know what evidence was before the state commission when these rates on fresh fish were ordered into effect in Alabama, and are not to be understood, therefore, as criticising that body for its action in this regard. But from what has been said it is clear that, with all the light on the question that the record and our own investigations give us, we can not accept the Alabama rates as a fair basis for fixing the defendant's rates to the same points from Pensacola. To do so would be to require the defendant to receive for that service less than seems to us to be reasonable compensation. Nor, in view of the protest of the defendant against the action of the state commission and of its efforts before that body to secure a withdrawal or modification of the order, may the defendant fairly be held responsible for the resulting discrimination. The relation of rates thus produced was neither voluntary nor the consequence of any uncontrolled action on its part; the continuance of the relation thus created is not in any sense attributable to the defendant unless it may be said that the defendant is under an obligation to correct the discrimination by voluntarily reducing its Pensacola rates to the basis of the Mobile rates. Substantially such a state of facts was presented in the proceeding entitled *In the Matter of Freight Rates between Memphis and Points in Arkansas*, 11 I. C. C. Rep., 180, 209, and the Commission found in the record no grounds upon which the carrier could be held at fault for a discrim-

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ination arising under similar conditions. Moreover, as the defendant's state rates are held down under the compulsion of an order by the state commission, an order by this Commission requiring it to cease and desist from the resulting discrimination against Pensacola would be equivalent to an order requiring the defendant to reduce its Pensacola rates to the level of the state rates out of Mobile. Such an order we are not prepared to enter, at least at this time and as now advised.

This view of the record will leave the Pensacola fish dealers without present redress before this Commission, so far as the discrimination complained of is concerned. But the situation is one that we find it difficult to remedy under existing legislation. While we have full authority, upon certain principles and within certain limits definitely fixed in the amended act, to deal with interstate rates, it is expressly provided in section 1—

That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory as aforesaid.

This language seems to have but one meaning, and that is that, although the Congress constitutionally may give and in fact has given to the national commission authority to control and regulate the rates to be demanded and accepted by interstate carriers on interstate traffic, it has excluded us from the exercise of any such powers as to the purely state traffic of interstate carriers. Whatever authority may be vested in the courts for the redress of such wrongs, it seems reasonably clear that this Commission, under such circumstances as are disclosed on the record, may not lawfully interfere by an order, the purpose of which is directly or indirectly to affect the rates imposed upon the defendant by the order of the Alabama commission.

The carriage of traffic by a common carrier for one community or one set of shippers at less than it carries the same traffic for a like distance, and under substantially similar transportation conditions, for another community or another set of shippers is not only in contravention of fundamental right and justice but is essentially iniquitous. If such a discrimination is practiced by a common carrier as between communities or different sets of shippers within the same state and on traffic moving only within the state, redress may usually be had under the state laws. On the other hand, if an interstate carrier is guilty of such a discrimination with respect to interstate traffic, redress may be had under the act to regulate commerce. But when a carrier, as in this case, serves two communities similarly situated, by hauling the same traffic under similar conditions from a point of origin to destinations in the same state and also to the same

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destinations from an interstate point of origin, it is not altogether clear that existing legislation affords redress against a discrimination, as between the two points, when resulting from an order by the state commission. But unless some such power is lodged somewhere under appropriate legislation, it is evident that state-made rates, if established in pursuance of a narrow or selfish local policy, may not only hinder and harm and burden interstate traffic and interstate interests, but may, if adjusted with that end in view, take from a point in another state a business that naturally belongs to that point or in which it is entitled at least to participate, on the basis of equal rates and equal opportunity. Whatever may be the explanation, whether it rests in the greater zeal, activity, and ability of the fishing interests at Pensacola or whether it is a natural advantage belonging to that port, the fact appears that for years Pensacola has enjoyed a larger business in the distribution of fish throughout the state of Alabama than has Mobile. By a readjustment of the state rates out of Mobile, whether so intended or not, the process of taking from Pensacola, through lower state-made transportation charges, what its superior zeal or its greater natural advantages have given to it has commenced and is now going on.

The defendant is one concern and one instrument of commerce operating through and across those invisible lines that separate the several states from one another. It has but one corps of officers and employees and but one equipment. Its only object is to serve all the shippers in the territory through which it passes. That object is legitimately effected only when it serves its whole constituent public upon substantially similar terms when the conditions are substantially similar. If it voluntarily makes a distinction between traffic that moves from a point in one state to a point in another state and traffic that moves between points in the same state, and gives to the state traffic lower rates than to the interstate traffic moving under substantially similar conditions, it imposes upon the latter a burden that it ought not justly to bear, and it discriminates against one community in favor of another. The same burden and discrimination follow if instead of voluntarily so adjusting its rates it is compelled so to adjust them by the action of a state commission. It may be that this anomaly in transportation necessarily results from our dual system of government and that a remedy is beyond reach without some amendment to the national constitution. On principle it is clear that a carrier operating through two or more states is but one vehicle of commerce, and all traffic moved by it, whether state or interstate, ought, when the general transportation conditions are the same, to bear its just proportion of the cost of operation and ought to yield no more and no less than its just proportion of the revenues of the carrier.

Any other theory is fundamentally inequitable, illogical, and unreasonable. It may be, but on that point we express no opinion, that the Congress may constitutionally protect interstate commerce, as well as the carriers that are engaged in interstate transportation, by requiring that any state traffic moved by such a carrier shall bear its just proportion of the cost of operation and yield its proper proportion of profit to the carrier; and that with such an end in view it may authorize this Commission to fix minimum rates, at least, for state traffic when moved by carriers engaged also in interstate transportation; or that it may provide that no carrier engaged in the interstate transportation of passengers or property may at the same time carry state traffic at rates that are less than the rates exacted by it for interstate carriage of like distance and under like transportation conditions. It has, however, not attempted any such legislation, and whether such an enactment would stand the test of scrutiny by the courts under the constitution as it now stands, and if so, whether it would be desirable from the standpoint of a broad public policy, are questions that must ultimately be determined by the legislative power and therefore can not profitably be discussed by the Commission in this proceeding.

Notwithstanding what has been said, we shall not at this time enter an order dismissing the complaint. While the defendant seems to have asserted its rights before the state commission with some vigor, we incline to the opinion that it rests under an obligation to the fish dealers of Pensacola to make every reasonable effort, by whatever remedies are legally open to it, to assert the soundness of its contention that the rates imposed upon it out of Mobile are unduly low. It was stated by counsel on the argument that it was the purpose of the defendant to contest the order of the state commission before the courts. We shall therefore not close this record until advised of the result of the defendant's further efforts in that behalf.

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No. 2983.

SUNDERLAND BROTHERS COMPANY

v.

MISSOURI, KANSAS &amp; TEXAS RAILWAY COMPANY ET AL.

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Submitted February 14, 1910. Decided April 11, 1910.

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It lies in the power of carriers to protect their revenues by fixing in the manner provided by law minimum weights for their carload rates. In the absence of a published minimum the carload rate, if it makes less than the l. c. l. rate, must be applied upon the actual weight, when the car is demanded and loaded by the shipper and tendered and otherwise handled as a carload shipment.

*C. E. Childe* for complainant.

*James Hagerman* and *Joseph M. Bryson* for Missouri, Kansas & Texas Railway Company.

*A. P. Humburg* for Illinois Central Railroad Company.

*E. B. Peirce*, *M. L. Bell*, and *A. B. Enoch* for Chicago, Rock Island & Pacific Railway Company.

#### REPORT OF THE COMMISSION.

*HARLAN, Commissioner:*

It appears here that a carload of 400 sacks of Portland cement, weighing in the aggregate 38,000 pounds, was shipped on May 21, 1909, over the lines of the defendants from Chanute, in the state of Kansas, to Denison, in the state of Iowa. There was no through rate in effect between these points, and charges were therefore collected on the basis of a joint rate of 10 cents per 100 pounds to Council Bluffs and a local rate of 4.9 cents per 100 pounds beyond. Although the 10-cent rate was published as a carload rate, the tariff in which it was carried omitted to attach a minimum carload weight to the rate and referred to no other schedule or rule defining a minimum carload weight for a movement of this commodity between those points under that rate. The omission is explained by the fact that the tariff in question named numerous destination points, to which index numbers were assigned from 1 consecutively to 2602; it prescribed a minimum weight of 30,000 pounds for all stations under index numbers from 1 to 75, inclusive, a minimum weight of 40,000 pounds to station numbers 76 to 115, 18 I. C. C. Rep.

inclusive, and so on, station No. 700 coming within a rule fixing a 40,000-pound minimum, while station No. 701 took a minimum of 30,000 pounds. Council Bluffs was added to the list of destination points in a supplement, being named as station No. 700-A; and neither in the original tariff nor in the supplement was any minimum weight assigned to 700-A, thus leaving the 10-cent carload rate to that point without any legally established minimum. When the tariff subsequently was superseded the defendants republished the 10-cent rate between Chanute and Council Bluffs and fixed the carload minimum at 30,000 pounds, that being the rate and minimum previously in effect to Omaha.

In another joint tariff published by the delivering carrier, the Rock Island, and effective only a few days before the date of this movement, a carload rate of 10 cents was named on this commodity from Chanute to Council Bluffs with a minimum weight of 40,000 pounds. This rate conflicted with the rate previously established by the initial line, and therefore was not a legal rate. *New Albany Box & Basket Co. v. I. C. R. R. Co.*, 16 I. C. C. Rep., 315. But apparently it was applied on the shipment in question, for the freight charges thereon were based on a minimum weight of 40,000 pounds, although, as heretofore stated, the weight of the shipment was but 38,000 pounds.

The absence of a legally established minimum carload weight suggests the inquiry as to the quantity upon which a shipper might claim the benefit of the carload rate in preference to the less-than-carload rate. And for the purpose of laying down a general rule we hold that when a car is demanded and loaded by the shipper and is tendered and otherwise handled as a carload, and no minimum carload weight is legally provided, the carload rate, if it makes less than the l. c. l. rate, must be applied on the actual weight. It lies in the power of a carrier to protect its revenues by fixing, in the manner provided by law, minimum weights to be applicable under its published carload rates. If it fails to take this precaution we think it imposes no hardship upon it to give a shipper the benefit of the carload rate on the actual weight of the shipment tendered as a carload, whether it be more or less than an ordinary carload quantity. We dispose of this complaint on that theory, and the ruling may be understood as being applicable to all cases of this kind arising in the future.

We therefore find that the complainant is entitled to reparation in the sum of \$2, that being the difference between the charges collected on the basis of a minimum carload weight of 40,000 pounds, not published as heretofore stated, and the charges that ought to have been collected on the basis of the actual weight of the shipment. It will be so ordered.

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No. 2789.

E. F. ROSE ET AL.

v.

BOSTON & ALBANY RAILROAD COMPANY ET AL., AND  
FOUR OTHER CASES DISPOSED OF IN THE ORDER EN-  
TERED HEREIN, WHEREIN THE PARTIES ARE NAMED,  
WHICH CASES ARE INDICATED BY DOCKET NUMBERS  
2823, 2824, 2825, AND 2826.

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*Submitted February 25, 1910. Decided May 9, 1910.*

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Defendants' less-than-carload rate on motorcycles from certain points in the east and the middle west to the Pacific coast terminals found unreasonable and reasonable rate thereon prescribed for the future. Reparation denied.

*J. O. Bracken* for complainants.

*F. C. Dillard, P. F. Dunne, C. W. Durbrow, and William F. Herrin* for Southern Pacific Lines.

*Robert Dunlap, T. J. Norton, E. W. Camp, and U. T. Clotfelter* for Atchison, Topeka & Santa Fe Railway Company.

#### REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

This case includes 13 formal complaints consolidated under one docket number and heard together. It involves the reasonableness of the less-than-carload rate of \$6 per 100 pounds on motorcycles, crated, from Springfield, Mass.; Hammondsport and Angola, N. Y.; Reading, Pa.; Geneseo, Chicago, and Aurora, Ill.; Milwaukee, Wis.; and Minneapolis, Minn., to San Francisco, Cal., and other Pacific coast terminals, as named in Trans-Continental Freight Bureau West-Bound tariff, I. C. C. No. 920, effective March 22, 1910.

More than 550 less-than-carload shipments made by 12 shippers late in 1907, and in 1908 and 1909, are set out in the various complaints.

It is alleged therein that the rate charged was unreasonable to the extent that it exceeded \$3.60 per 100 pounds. Reparation is asked in each complaint.

At the hearing complainants relied in part on the finding of the Commission in the case of *Merchants' Traffic Assn. v. A., T. & S. F. Ry. Co.*, 13 I. C. C. Rep., 283, in which it was stated that "on the whole we think the rate applied to the shipment of motorcycles should not exceed that imposed on bicycles," and an order was issued to the  
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effect that rates on motorcycles from St. Louis, Mo., to Denver, Colo., should not exceed one and one-half first class in less than carloads and first class in carloads. In addition to this the evidence shows that motorcycles, crated, weigh from 225 to 250 pounds, and bicycles, crated, from 40 to 50 pounds; that motorcycles occupy when crated a space 7 feet long, 3 feet high, and 9 inches wide; that bicycles occupy when crated a space 6 feet long, 3 feet high, and 7 inches wide; that motorcycles vary in price from \$150 to \$225; that bicycles vary in price from \$30 to \$50; that the profit on motorcycles ranges from \$10 to \$50; that the profit on bicycles ranges from \$5 to \$10, and that loss and damage from shipment is a negligible element with reference to each of the commodities. The evidence also shows that at least one dealer in motorcycles shipped 20 machines during the year 1909 from New York by water. The water rate at that time was \$3.75 per 100 pounds and is now \$3.50. There is no evidence of the movement of bicycles by water, but defendants assert that the rates on bicycles were made to meet water competition. The movement of bicycles for many years was largely in excess of the movement of motorcycles, but in recent years there has been large increase in the use of motorcycles, and many dealers are now buying and selling more motorcycles than bicycles. A statement filed by defendant Atchison, Topeka & Santa Fe Railway shows that during the year 1909 there was a larger tonnage of less-than-carload shipments of motorcycles than bicycles.

Tariffs show that at the time the shipments moved the less-than-carload rate on bicycles, crated, was \$4.50 per 100 pounds, T. C. F. B., tariff, I. C. C. No. 865, Rule 18. The \$3.60 rate, alleged by complainants to be reasonable to apply to less-than-carload shipments of motorcycles, now applies on bicycles "completely boxed." It is insisted by complainants that the rule making a different rate for "crated" and "boxed" bicycles is unreasonable, for the reason that they may be safely carried in crates. It is further pointed out that in Western and Official Classifications motorcycles and bicycles are classified to permit shipments boxed or crated.

At the time these shipments moved there was no carload rate on motorcycles, but effective December 6, 1909, the carload rate on motorcycles was made \$4 per 100 pounds, minimum 15,000 pounds. The carload rate on bicycles was at the time and now is \$2.50 per 100 pounds, 10,000 pounds minimum.

It is contended by defendants that the rates in question are induced by water competition, and that the difference in rates on motorcycles and bicycles is because of the greater value of the former and the larger volume of the traffic of the latter. It is also contended by defendants that the rate on bicycles is not a fair measure of the rate

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on motorcycles, and that while in a certain sense they are competitive, value, volume, and weight considered, the motorcycle rate is reasonable and the bicycle rate unreasonably low. The rates on both commodities are blanketed from the Mississippi River to the Atlantic seaboard. Defendants further point to the fact that the traffic has moved freely under the existing adjustment.

We are not impressed with the contention of defendants that the rates on motorcycles and bicycles are both induced by water competition. This in no way accounts for the marked difference in the rates as applied to each. If water competition forces a \$3.60 rate on bicycles, boxed, it does not follow, as we see it, that the same competition forces a \$6 rate on motorcycles, boxed or crated. It is to be observed that the carload rate on motorcycles, boxed or crated, is now 40 cents per 100 pounds more than the less-than-carload rate applicable to bicycles, boxed. There is no transportation reason for maintaining a less-than-carload rate on motorcycles in excess of that on bicycles. The reason for fixing the \$3.60 rate on bicycles does not appear. At least one witness for defendants stated that there are now no shipments of bicycles to San Francisco by water.

The evidence shows that the volume of traffic in motorcycles has increased rapidly, and equals, if it does not exceed, the movement of bicycles. It is not necessary here to determine that there should be an unvarying relation between the rates on motorcycles and bicycles where they are packed and shipped in the same manner.

Considering all the facts and circumstances in evidence, however, our conclusions are, and we so find, that a charge in excess of one and one-half times first class rate on motorcycles, less than carload, boxed or crated, from and to the points herein involved is unreasonable, and the defendants will be required to maintain for the future a rate not in excess of one and one-half times first class.

Under all the circumstances shown in this case we are of opinion that no awards of reparation should be made.

An order will be entered in accordance with the above findings.

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No. 2145.

L. W. BLINN LUMBER COMPANY

v.

SOUTHERN PACIFIC COMPANY ET AL.

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*Submitted June 24, 1909. Decided May 9, 1910.*

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1. The statutory period of two years within which this Commission has jurisdiction to award damages arising from violations of the act to regulate commerce runs from the time when a shipment is delivered and when it becomes the legal duty of the carrier to collect its lawful charges.
2. From the time of delivery of a shipment the obligation rests upon the carrier to collect, and upon the shipper to pay, the lawfully established tariff rate, and neither carrier nor shipper may be allowed, by refusal to observe the law's requirements, to extend the period within which relief may be obtained from the Commission.
3. A carrier's unlawful waiver of collection can not be allowed to expand the shipper's legal rights.
4. Complainant seeks reparation for the collection of alleged unreasonable charges upon two carloads of mining timbers shipped from San Pedro, Cal., to Charleston, Ariz., on January 29, and April 11, 1906; charges were collected on January 30, 1907; complaint filed January 6, 1909; *Held*, That the proceeding is barred by section 16 of the act to regulate commerce.

*E. S. Williams* for complainant.

*O. W. Durbrow* for Southern Pacific Company.

*Hawkins & Franklin* for El Paso & Southwestern Railroad Company.

#### REPORT OF THE COMMISSION.

**LANE, Commissioner:**

Two carload shipments of mining timbers were delivered by complainant to the Southern Pacific Company at San Pedro wharf, California, on January 29, 1906, and April 11, 1906, respectively, consigned to Charleston, Ariz., a point on the line of the El Paso & Southwestern. The aggregate weight of the shipments was 105,600 pounds and complainant was charged at the then established rate of \$8.10 per ton or the sum of \$427.69. It is alleged in the complaint that the rate of \$8.10 per ton was unreasonable to the extent that it exceeded \$4.25 per ton. Reparation is asked.

The first question presented is whether the claims are barred by the two years' limitation provided in the act. Complaint was not made until January 6, 1909. It appears, however, that payment of the freight charges was not made until January 30, 1907.

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It is the contention of the Southern Pacific that complainant's cause of action, if any, accrued at the time it delivered the shipments to the Southern Pacific at San Pedro wharf and charges were assessed under the rates then in effect, or at least the cause of action accrued at no later date than at the time demand was made upon complainant.

In answer to this complainant asserts that it is within the power of carriers to require prepayment of freight or payment at delivery under its lien right. If it waives this privilege it can not be heard to complain that the statute of limitations does not begin to run until actual payment after the shipment has moved, as this is the result of its own waiver. There could not be a refund of money that has not been received. It is only after the collection of freight money that any question of reparation by reason of an unreasonable rate can arise.

After careful consideration of the contentions of all parties to this proceeding as to the right of the complainant to maintain this proceeding for reparation before the Commission it is our conclusion that we are without power to grant the relief prayed for.

The act provides that "all complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after." To this provision we have given construction in that proceeding bearing the title, *When a Cause of Action Accrues under the Act to Regulate Commerce*, 15 I. C. C. Rep., 201, but the precise question raised herein was not taken cognizance of in that matter. Here the question is whether this Commission may award damages for the imposition of an excessive rate when such rate was imposed more than two years prior to complaint being made before this Commission. It appears, to be sure, that the full rate was not collected until January 30, 1907, and this proceeding was brought January 6, 1909, thereby saving the claim as against the statute of limitations, if the cause of action did not accrue until the date of payment. But the shipments moved in January and April of 1906, and within two weeks after their delivery demand was made upon the complainant for the tariff charges which the carrier had the right to exact whether reasonable or otherwise, because they were the charges recognized by the law as the only charges which the carrier could impose without being subjected to the penalties provided in the act for accepting a less rate than that published in its schedules.

A carrier may not demand or collect a greater or less or different compensation for the transportation of passengers or property than the rates specified in the tariff filed and in effect at the time of the movement (section 6); and under the Elkins Act (section 1) not only is it provided that the carriers shall strictly observe their tariffs but that it shall be unlawful for any person or corporation to solicit, accept, or receive any rebate, concession, or discrimination in respect

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to the transportation of any property in interstate or foreign commerce by any common carrier subject to the act to regulate commerce. Here, then, is a statutory duty imposed upon the carrier to charge, and upon the shipper to pay, the rate fixed in the tariffs, and deviation from this rule subjects both carrier and shipper to fine or imprisonment. While it is the common-law rule that a cause of action does not accrue until actual payment has been made, so that there may be a basis in law for recovery, this rule is necessarily modified as to carriers subject thereto by the provisions of the act to regulate commerce. There can be no waiver on the part of a common carrier of its right to collect its tariff rates. It must, upon the delivery of a shipment, exact whatever rates its schedules necessitate or it is guilty under the law of granting a concession effecting a discrimination. Unless this position is taken by the Commission and such construction of the act given, there can be no such thing as a rebate so long as a running account is maintained between the shipper and the railroad.

Moreover, the position of the complainant is that the carrier by its own act may extend the statute of limitations indefinitely; so that on a shipment which moved to-day it need not collect the rate until the year 1920, keeping it in suspense, and at any time during the interval defending itself against attack in court for granting a rebate upon the ground that the rate, or a portion thereof, was in dispute as between the shipper and the carrier, or that it had not chosen for its own purposes to make the collection which the law commands. The provisions of the law are entirely incapable of enforcement unless the ground is firmly taken that from the time of the delivery of the shipment the obligation rests upon the carrier to make collection and upon the shipper to pay the rate. Reading the entire act together no other conclusion than this can be arrived at, and the general principles of law governing contracts must be regarded as by necessary implication revoked as to interstate carriers under the mandatory requirements of this act.

The theory of the common law permitted carriers to make private contracts for transportation, which contracts were evidenced by the bills of lading given to the shippers. Under this practice charges varied as between shippers, and the fullest freedom was exercised to "trade" in transportation. The abuses arising under such conditions led to the enactment of the act to regulate commerce. Thenceforth the rates to be charged for transportation were removed from the field of barter and became matters of legal regulation. The bill of lading became at once little more than a receipt for the goods to be transported, into which could be legally incorporated nothing obnoxious to the law. It was therefore placed beyond the power of the agent of a corporation carrier, or of any other officer thereof, to bind the

carrier to any rate other than that applicable, under the filed tariffs, to the traffic accepted for transportation. This is necessarily so, else the purpose of the law could be set aside at will by any agent who might choose to favor or to injure a shipper. The shipper obtains transportation by right of law, and the rate charged is not the result of contract, but is fixed and determined under a required legal form.

In support of this view we find the decisions to be imperative that every carrier, subject to the act to regulate commerce, must charge the rate shown in its published tariffs, even though (1) a different rate be shown in the bill of lading, or (2) a different rate be quoted to the shipper by the agent of the railroad, or (3) a different rate be agreed to by both carrier and shipper in a written contract, or (4) a different rate be declared by the courts to be the reasonable rate.

(1) In *G., C. & S. F. Ry. Co. v. Hefley*, 158 U. S., 98, the Supreme Court of the United States decided that on an interstate shipment the carrier must collect the rate named in its regularly published tariff, even though the lower rate had been named in the bill of lading. This case arose in Texas, in which state a statute made it unlawful for a railroad company in that state to charge a greater sum for transportation of freight than the sum specified in the bill of lading. The Supreme Court held that under the act to regulate commerce the published tariff must be observed, and that the Texas statute must give way as to all interstate shipments.

(2) In *T. & P. Ry. Co. v. Mugg*, 202 U. S., 242, the Supreme Court reaffirmed the decision in the *Hefley case* and applied it to a case in which the agent of the railroad at the point of shipment had quoted to the shipper a lower rate than the one set forth in the published tariffs. It was again decided that the incorrect quotation did not serve to vary the published tariff or to give the shipper a right to forward goods at the lower rate.

(3) In *Armour Packing Co. v. United States*, 209 U. S., 56, it was expressly held that a written contract for a rate lower than the published tariff could not be observed by the parties without making them criminally liable for breach of the act to regulate commerce. This case is made the stronger by the fact that the contract was legal at the time it was made, the rate named in it being according to the then legally published tariffs of the carrier. These tariffs were afterwards amended by the carrier, and an increased rate named. The court held that the amendment to the tariff would supersede the contract, and heavily fined the shipper who shipped under the contract after the tariffs had been amended.

(4) In *T. & P. Ry. Co. v. Abilene Cotton Oil Co.*, 204 U. S., 426, it was held that even the fact that the rate named in the published tariff is unreasonable in amount, and has been so declared by a court, will not justify the carrier in paying or the shipper in receiving

a refund or reduction from such rate. As in the other cases cited above, the court held that the published rate must be enforced upon all alike until it has been changed in the manner provided by the act to regulate commerce, and that proceedings to have a published rate declared unreasonable in amount must be brought in the first instance before the Interstate Commerce Commission.

It thus appears that the rates named in published tariffs may not, so far as interstate shipments are concerned, be varied by any arrangement between shippers and carriers, whether oral or written, or by state legislation or by court proceedings, except as such proceedings may be necessary under the act after an order has been made by this Commission.

If, then, charges are now imposed by reason of the command of the law and may not be altered or remitted by the carrier and the shipper, even though such charges are unconscionable, it would seem but reasonable, and in entire harmony with the spirit of the act, that an interpretation of the statute which allows the shipper to extend indefinitely his right to ask relief before this Commission should be abandoned. There can be no waiver of collection by the carrier, and therefore by his failure to collect the carrier is not expanding the rights of the shipper. The charge not arising out of a meeting of minds but out of a positive provision of law, how may a shipper secure to himself an advantage over other shippers by refusing to obey that law? If he has no answer to make in court to the complaint of the carrier that he refuses to pay the lawful published rate, on what theory may he come before this Commission pleading that by such refusal he has extended the time within which he may recover at our hands? It would appear but plain common sense that a man may not waive that as to which he is not free to make a new contract. The right to waive arises out of the fact that parties may at any time change their minds or alter their relationships. But a carrier which may not contract with a shipper that it will carry the latter's traffic for less than the published rate, and a shipper who may not before or after the traffic has moved even solicit another rate than that which is published, certainly are not in a position to regard themselves as free to agree together as to what relation they shall bear to each other or what powers shall be given to this Commission. The reciprocal rights and duties of the shipper and carrier are fixed by the tariffs at the time of movement, and being so fixed they remain unalterable save in so far as the Commission is empowered to extend relief for violations of law.

Furthermore, if a carrier may for an indefinite period waive its right to collect at the time of delivery the lawful charge, and thus postpone the action of the statute of limitations, the act becomes practically valueless to the shipper as a means of recovering unrea-

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sonable charges through this Commission. Let us assume that in this case the carrier had failed to collect its tariff rates for five years (and it would have as much right to defer collection for that period as for one year) and that after five years had expired collection had been made. According to the contention of the complainant the statute would but then begin to run, so that after a period of seven years from the date of movement of the shipment this Commission could be called upon to determine what was the reasonable rate that should have been collected at the time of movement—a task well-nigh impossible. Such an illustration serves to make plain what we regard as the evident intention of Congress: That the period of two years within which this Commission is allowed to award damages for acts arising under violations of the provisions of this act begins to run at the time when the shipment is delivered and when it becomes the legal duty of the carrier to collect its lawful charges. Under this interpretation the act to regulate commerce becomes workable and enforceable from the standpoint of shipper, carrier, and the Commission itself.

There is nothing harsh in this rule. A shipper who does not promptly pay the lawful rate accepts his own risk, knowing that the time for appeal to this Commission is running against him. He has but two years in which to make that appeal. The same period is fixed as to all other shippers. Plainly an award to one shipper under such circumstances as are presented in this case would effect discrimination as against all other shippers who did not refuse to pay the lawful rate, and as to whom the statute of limitations has now run. By any other construction of the law we would be placing a premium upon the refusal of shippers to pay charges when due, and would be putting it into the power of the carriers to give to favored shippers a secure and certain advantage.

The complaint will be dismissed.

HARLAN, *Commissioner*, concurring:

I am in full accord with the conclusions announced in the report of the Commission and do not see how the act and the other legislation in support of it may successfully be administered upon any other theory. When all their provisions are considered in their relation to one

- another, these statutes evidently contemplate that the carrier shall collect and the shipper shall pay the published rate upon the completion of the transportation contracted for between them. Irrespective of any private understanding as to the rate, and even if the carrier through error or otherwise has misquoted the rate, these acts impose the obligation upon the carrier to collect and upon the shipper to pay the published rate. Nothing can excuse any omission of duty in this regard by either the one or the other; and the rate having been paid,

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no relief may be had by the shipper except under a finding by this Commission, upon complaint and after full hearing as provided in section 15, that the rate collected was an excessive or an otherwise unlawful rate.

The gist of such a proceeding, which is the kind of action referred to in that part of section 16 that bars complaints for damages unless filed within two years after "the cause of action accrues," is the alleged unlawfulness of the published rate; and there can be no recovery of damages except upon a finding in support of that allegation. The unlawfulness of the rate is the shipper's cause of action, and the amount actually paid by him in excess of a lawful rate is but the measure of his damages. The wrong done to the shipper, with respect to shipments already made, arises out of the publication by the carrier of an unlawful rate and the obligation imposed upon the shipper by the publication to pay that rate. The bar of the statute therefore commences to run when the obligation of the shipper to pay the unlawful rate has become a completed obligation—namely, upon the delivery of the shipment to him at destination, and manifestly can not be postponed by the failure of the shipper to fulfill his obligation. It is true that there can be no recovery of damages unless the unlawful rate has been paid; nevertheless the inquiry in any such proceeding is whether the published rate was excessive and if so to what extent. That is the issue, the cause of action, as well as the subject-matter of the controversy between the shipper and the carrier; and when resolved in favor of the shipper the extent of his damages on a particular shipment is a mere matter of calculation, wholly incidental to the controversy. While the case itself is based upon facts of a wholly different nature, nevertheless the language used in *Bauserman v. Blunt*, 147 U. S., 647, 659, where a state statute was under consideration, is suggestive. It is there said, quoting from cases cited with approval, that—

a person can not prevent the operation of the statute of limitations by delay in taking action incumbent upon him, and to permit an indefinite postponement would tend to defeat the purpose of the statutes of limitation, which are statutes of repose, founded on sound policy, and which should be so construed as to advance the policy they were designed to promote.

COCKRELL, *Commissioner*, dissenting:

I am unable to concur in the report of the Commission in this case. The matter involved is reparation for an unreasonable rate assessed upon two shipments moving in January and April, 1906, the charges on which were actually collected by the defendant January 30, 1907. The complaint for the recovery of damages was filed with the Commission January 6, 1909, within two years from the time the freight charges were paid, but nearly three years after the transportation had been completed. Upon this state of facts the report holds "that

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we are without power to grant the relief prayed for." To this conclusion I dissent.

That the carrier must collect its lawful charges I entirely agree, but I find no time limit upon such duty other than the various statutes of limitation in force in the several states. Subject to the restrictions and penalties contained in the act to regulate commerce and the Elkins Act, carriers may collect their published rates either:

1. At the time the shipment is tendered for transportation; or,
2. At the time the shipment is delivered to the consignee; or,
3. They may extend reasonable, but not unduly preferential, credit to an approved or bonded shipper for such freight charges.

The extension of credit for freight charges to one shipper and the denial of such credit to others is undoubtedly a preference to the one and a disadvantage to the others; but whether the preference is due or undue, whether the disadvantage is reasonable or unreasonable, is a matter of fact. The report says:

While it is the common-law rule that a cause of action does not accrue until actual payment has been made, so that there may be a basis in law for recovery, this rule is necessarily modified as to carriers subject thereto by the provisions of the act to regulate commerce. There can be no waiver on the part of a common carrier of its right to collect its tariff rates. It must, upon the delivery of a shipment, exact whatever rates its schedules necessitate or it is guilty under the law of granting a concession effecting a discrimination.

I can find no provision in the interstate-commerce law requiring the carriers to collect the lawful tariff charges upon the delivery of the shipment or to refuse an extension of time to the shipper for paying the charges, or to modify the common-law duties of the carriers in the collection of the charges. It is clearly the duty of the carrier to collect the published tariff charges in effect at the time the shipment moves. If it collects unjust or unreasonable charges to the damage of the shipper, then the question arises, When does the shipper's cause of action for the recovery of such damages accrue? The statute is very plain:

All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues.

Not "within two years from the time the shipment moved;" not "within two years from the time the carrier was entitled to demand payment;" but "complaints for the *recovery of damages* shall be filed with the Commission within two years from the time the *cause of action accrues*."

The phrases "recovery of damages" and "cause of action accrues" are perfectly plain and well-understood terms of law, and they are to be interpreted in a reasonable sense, such as must have been in the mind of the legislature when they were used. The Commission in January, 1908, published the following:

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A cause of action accrues, as that phrase is used in the act, on the date the freight charges are actually paid.

In the memorandum entitled: *When a Cause of Action Accrues under the Act to Regulate Commerce*, 15 I. C. C. Rep., 201, decided February 2, 1909, the Commission reaffirmed this interpretation of the statute, and held:

In complaints for the recovery of damages caused by charges of rates unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, the cause of action accrues when the payment is made. In any other complaints for the recovery of damages for alleged violations of the interstate commerce laws, of which this Commission has jurisdiction, the cause of action accrues when the carrier does the unlawful act or fails to do what the law requires, on account of which damages are claimed.

That the present report is intended as remedial legislation appears upon its very face. It says:

Unless this position is taken by the Commission and such construction of the act given, there can be no such thing as a rebate so long as a running account is maintained between the shipper and the railroad.

\* \* \* \* \*

We regard as the evident intention of Congress: That the period of two years within which this Commission is allowed to award damages for acts arising under violations of the provisions of this act *begins to run at the time when the shipment is delivered and when it becomes the legal duty of the carrier to collect its lawful charges.* Under this interpretation the act to regulate commerce becomes workable and enforceable from the standpoint of shipper, carrier, and the Commission itself.

If this be the evident intention of Congress, then it would appear that Congress was very unfortunate in the choice of words. It would have been easy to express such intention by saying "within two years from the time the shipment is delivered."

One of the duties of this body is to make annual reports to Congress. Under the act:

This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary.

To the essential intent of the report in this case I should give my hearty approval if the same were addressed to the Congress of the United States. Without such designation, as a report upon a specific case, I must dissent.

I am authorized to say that Commissioner Prouty unites in this dissent.

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No. 2776.  
BLODGETT MILLING COMPANY  
v.  
CHICAGO, INDIANA & SOUTHERN RAILROAD COMPANY  
ET AL.

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*Submitted March 28, 1910. Decided May 18, 1910.*

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Complaint alleging the collection of unreasonable charges on five carloads of buckwheat shipped from points in Indiana, Michigan, and Pennsylvania to Janesville, Wis., dismissed because barred by the statute of limitations. *Blinn Lumber Co. v. Southern Pacific Co.*, ante, p. 430, followed.

*Frank H. Blodgett* for complainant.

*William Ellis* and *F. G. Wright* for Chicago, Milwaukee & St. Paul Railway Company.

*F. H. Smith* and *O. E. Butterfield* for Chicago, Indiana & Southern Railroad Company; Indiana Harbor Belt Railroad Company; and Lake Shore & Michigan Southern Railway Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

Complainant challenges the reasonableness of the charges collected by the defendants for the movement of five carload shipments of buckwheat from Wheatfield, Ind.; Reed City and Mosherville, Mich.; and Raymilton, Pa., to Janesville, Wis. On each shipment a joint through rate in excess of the combination of locals was assessed, and reparation is sought upon that basis.

The shipments in question moved in October and November, 1906, but on account of a controversy as to the rates lawfully applicable the payment of charges was delayed until June 3, 1909. Complaint was not filed with this Commission until August 17, 1909.

It appearing that more than two years elapsed between the delivery of these shipments and the institution of proceedings before this Commission, the complaint must be dismissed upon authority of *Blinn Lumber Co. v. Southern Pacific Co.*, ante, p. 430. It will be so ordered.

Commissioners PROUTY and COCKRELL dissent for the reasons stated in Commissioner COCKRELL's dissenting opinion in *Blinn Lumber Co. v. Southern Pacific Co.*, supra.

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No. 1542.

RECEIVERS & SHIPPERS ASSOCIATION OF CINCINNATI  
v.  
CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAIL-  
WAY COMPANY ET AL.

No. 1564.

CHICAGO ASSOCIATION OF COMMERCE  
v.  
PENNSYLVANIA COMPANY ET AL.

*Submitted May 10, 1909. Decided February 17, 1910.*

1. In 1894 this Commission decided what is known as the *Freight Bureau cases*, 6 I. C. C. Rep., 195, and ordered certain reduction in rates from Cincinnati to Chattanooga and other southern points, but the courts declined to enforce this order upon the ground that the Commission had no power to fix a future rate. Under the Hepburn Act the Commission was invested with such power and thereupon the present proceedings were begun for the purpose of obtaining the benefit of the holding of the Commission in the former cases, but only the rates from Chicago and Cincinnati to Chattanooga are involved. Upon the facts disclosed by the record; *Held*, That it is not clearly apparent that rates from the east discriminate against the west, and that, if so, that discrimination under all the circumstances of the case, is not undue; but that present rates on numbered classes from Cincinnati to Chattanooga are unreasonable to the extent that they exceed the rates named in the report herein.
2. There can be no such thing as judicial estoppel in the proceedings of this Commission, since its orders are not judgments nor is it a judicial body. If that principle could be applied to the decisions of the Commission it is manifest that it could have no application here, since the parties are not the same.
3. It is apparent that if distance is to be taken as the standard, rates from the complaining cities are much higher than from their rival trade centers upon the Atlantic seaboard; but where water competition enters as a factor some different basis of comparison than distance must be found.
4. The testimony shows that while the Cincinnati, New Orleans & Texas Pacific Railway is ordinarily regarded as part of the Southern Railway system, its operation is in fact entirely distinct from that of the Southern Railway. It is certainly doubtful whether in view of the *Commodities cases*, 213 U. S., 366, it can be affirmed that there is such a connection between the Southern Railway and the Cincinnati, New Orleans & Texas Pacific that these two companies can be held responsible under the third section of the act for the rates of one another.

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5. Within certain limits a railroad company is bound to protect its territory, and within those limits this Commission may consider the rates and their effect upon the movement of traffic. The east and the west find a common market in this section of the south, and in determining whether the present rates from the west are reasonable one subject of inquiry is the movement of traffic under the present rates. The fair inference from the testimony seems to be that the relation in rates between the east and the west which has been in effect for the last third of a century does not to-day abnormally promote the movement of traffic from either section.
6. Neither the east nor the west has any vested right to sell a certain amount in this southern territory. Each section is entitled to a reasonable rate and to do what business it can under that rate.
7. A railroad is entitled to a fair return upon the value of the property devoted by it to the public use, but it is not entitled to have that property paid for by the public.
8. In determining the reasonableness of rates from the west to southern territory the interests of all competing lines must be considered and not merely that line which can handle the business cheapest.

*Samuel O. Bayless, E. E. Williamson, Jesse A. Baldwin, and Henry C. Barlow* for complainants.

*Ed. Baxter and R. Walton Moore* for Cincinnati, New Orleans & Texas Pacific Railway Company; Southern Railway Company; Louisville & Nashville Railroad Company; and Nashville, Chattanooga & St. Louis Railway.

*C. B. Northrop* for Southern Railway Company.

*C. B. Fernald* for Pennsylvania Company; Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company; and Pennsylvania Railroad Company.

*George R. Nutter* for Merchants' Association of Boston, Business Men's Association of Holyoke, and Boards of Trade of Salem, Fitchburg, and Springfield, Mass., and of Portland, Me., interveners.

*J. C. Jones* for Trades League of Philadelphia, Merchants' Association of New York, Chamber of Commerce of Richmond, Board of Trade of Norfolk, Chamber of Commerce of Petersburg, Merchants' and Manufacturers' Association of Baltimore, and Travelers' & Merchants' Association of Baltimore, interveners.

*J. Keavy and E. E. Gates* for Indianapolis Freight Bureau, intervener.

#### REPORT OF THE COMMISSION.

*PROUTY, Commissioner:*

In 1894 the Commission decided *Cincinnati Freight Bureau v. C., N. O. & T. P. Ry. Co.* and *Chicago Freight Bureau v. L., N. A. & C. Ry. Co.*, 6 I. C. C. Rep., 195. These proceedings had been instituted by the commercial interests of Cincinnati and Chicago for the purpose of correcting an alleged discrimination in rates upon the numbered classes from points of origin in the central west as compared  
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with rates from points of origin in the east to southern territory. The defendants in the *Cincinnati* case were the members of the Southern Railway & Steamship Association, including practically all the lines of railway operating south of the Potomac and Ohio and east of the Mississippi rivers, together with various lines of steamships plying between North Atlantic ports like New York and Baltimore and southern ports like Charleston and Savannah. The Chicago complaint added to these certain lines of railway operating between Chicago and the Ohio River.

As already said, the gravamen of the complaint in both cases was that rates upon the numbered classes from the central west represented by Cincinnati and Chicago to various points of consumption in the south were too high, as compared with rates upon the same classes from points of origin in the east to the same destination in the south. These rates were made by the Southern Railway & Steamship Association, and the theory of the complainants was that the members of this association were jointly responsible for the rates established by the association, and that, therefore, if an undue preference was created by such rates in violation of the third section the Commission might by its order direct the various defendants to cease and desist from such violation of law. The defendants took the ground that even though the rates established by the individual lines were fixed by or at the dictation of the Southern Railway & Steamship Association they were none the less, when published, the individual rates of the individual lines over which they applied; that, therefore, no line could be held responsible for a rate to which it was not a party for the mere reason that it had been suggested by the association. Since at that time the same line of railway did not in any case handle traffic to these southern points from both the east and the west, the Commission would be, upon the theory of the defendants, without jurisdiction to find or correct the preference.

Without quite deciding the question the Commission was inclined to adopt the view of the defendants and to hold that the rates when established were those of the individual lines and that the Commission could not, therefore, inquire whether these defendants by their rates did or did not unduly prefer the east to the west.

The complaint of the Cincinnati Freight Bureau contained no allegation that the rates from western to southern points were unreasonable, but that of the Chicago Freight Bureau did allege that these charges upon the numbered classes from Cincinnati and other Ohio River crossings to southern points of destination were excessive, and that the rates from Chicago were even more excessive. The Commission held that under this allegation it might inquire into the inherent reasonableness of these rates and proceeded to dispose of the case upon

that ground, holding that the rates from Cincinnati were too high and should be materially reduced.

Below are given the rates then in effect from Cincinnati to Chattanooga and those ordered by the Commission, showing the reductions made.

Classes -----	1	2	3	4	5	6
Rates in effect.....	76	65	57	47	40	30
Reduced rates.....	60	54	40	30	24	22
Reductions .....	16	11	17	17	16	8

Rates from Chicago to Chattanooga were made by adding the full local rates from Chicago to Cincinnati to the rates in effect from Cincinnati to Chattanooga. The Chicago Freight Bureau contended not only that the rate from Cincinnati was too high, but that the through rate from Chicago should be less than the combination. This claim upon the part of the Chicago Freight Bureau was not apparently sustained by the Commission, and rates from Chicago were left to be constructed by combining the full local rate to Cincinnati with the reduced rate from Cincinnati south.

It may be here noted that the present rates from Cincinnati to Chattanooga are the same as they were in 1894, but that the through rates from Chicago to Chattanooga were in 1895 reduced 5 cents, first class, and various amounts upon the other classes, to meet a corresponding reduction from St. Louis, and are therefore at the present time less than the full local combination.

Neither the report nor the order of the Commission attempted to fix the relation of rates to southern points between the east and the west. The order simply directed the defendants to cease and desist for the future from charging rates from Cincinnati to Chattanooga and various other points in the south which were in excess of those found to be reasonable by the Commission.

This order was not complied with, and the Commission thereupon instituted proceedings in the circuit court for the southern district of Ohio to enforce obedience to its requirements, and such proceedings were had in that suit that the Supreme Court of the United States finally directed a dismissal of the bill of complaint upon the ground that, under the act to regulate commerce, as it then stood, the Commission had no authority to establish a rate for the future; that this order was in effect the fixing of a future rate, and therefore without warrant of law and void. *Interstate Commerce Commission v. C., N. O. & T. P. Ry. Co.*, 167 U. S., 479.

No question of fact was passed upon in that proceeding by either the circuit court or the circuit court of appeals or the Supreme Court of the United States.

Under the Hepburn Act of 1906 the Commission was invested with jurisdiction to establish a rate for the future, and thereupon  
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the present proceedings were begun for the purpose of obtaining the benefit of the holding of the Commission in the former cases. In the first of these cases the Receivers and Shippers Association of Cincinnati is the complainant and the Cincinnati, New Orleans & Texas Pacific Railway Company and the Southern Railway Company are the only defendants. In the second the Chicago Association of Commerce is the complainant and the Pennsylvania lines, both east and west of Pittsburg, are made defendants in addition to the defendants in the *Cincinnati case*. It will be noted that the commercial interests of the same localities, although under a different designation, are still complainants. The original cases put in issue rates to eight representative points in the south, of which Chattanooga was one, while these complaints refer to Chattanooga alone. The defendants in the original cases were all the members of the Southern Railway & Steamship Association, while in the present proceeding only the Cincinnati, New Orleans & Texas Pacific Company and the Southern Railway Company are attacked. Upon the face of the complaints, therefore, only rates to Chattanooga are involved, and those by only a single line of railway from Cincinnati to Chattanooga, but the complainants frankly admitted that they had selected Chattanooga and the Cincinnati, New Orleans & Texas Pacific, because they believed that this made the strongest case for their contention, and that it was their hope and expectation that whatever was done at Chattanooga must be extended to other points in the southeast. While, therefore, upon the record the parties are more restricted than formerly, the issue is in reality the same, and is, Will the Commission establish now the rates found reasonable in 1894?

It should perhaps be noted that the Indianapolis Freight Bureau has intervened in favor of the complainants, and that the Louisville & Nashville Railroad Company, and the Nashville, Chattanooga & St. Louis Railway have intervened in behalf of the defendants. Certain commercial organizations in various parts of the country, but particularly in the east, asked leave and were permitted to appear at the hearings, produce testimony, and file briefs.

As already suggested, the question presented here is identical with that presented in 1894, and the complainants insist that the decision of the Commission in the former cases ought to be controlling in this case. This claim of the complainants may be first considered.

Plainly there can be no such thing as judicial estoppel in the proceedings of this Commission since its orders are not judgments nor is it a judicial body. If that principle could be applied to our decisions it is equally manifest that it could have no application here, since the parties are not the same.

It is, however, obvious that questions really the same must be often presented to the Commission in various proceedings to which the parties are entirely different. When a given situation has been fully considered and deliberately passed upon, that decision ought to be, if not binding upon the Commission, certainly of very great weight with it; but it should first be certain that the judgment of the Commission was applied to the same state of facts then as now.

Fifteen years have elapsed since the former cases were disposed of. Conditions have materially changed. The history of those years may throw light on the reasonableness of the rates involved. We are operating to-day under a different statute, and this may have influenced the defendants in making presentation of their defense. The order of this Commission fixing a rate for the future to-day is of more importance to the carrier than its order then. It is well understood that under the old law, where the whole question must be heard *de novo* by the court, carriers frequently neglected to introduce their whole case before the Commission, relying upon their ability to do so in subsequent judicial proceedings.

We can not, therefore, follow blindly the decision in the former cases, but must examine this record which contains, among other things, the former record before the Commission, and must reach upon the whole such conclusion as is warranted by the case as now presented.

As already stated the principal thing attacked by the original complaint was the discrimination against the central west and in favor of the east. The inherent reasonableness of the rates from Cincinnati and the central west to southern destinations was not referred to in the complaint of the Cincinnati Freight Bureau and only incidentally mentioned in that of the Chicago Freight Bureau.

To make out their case the complainants seem to have relied upon two classes of testimony: First, a comparison of rates and distances from the east and from the west to these southern points, and, secondly, the proceedings of the Southern Railway & Steamship Association.

The Commission held that it would not take jurisdiction to fix a just relation between rates from the east and from the west, but it found in the proceedings of the Southern Railway & Steamship Association a state of facts which in its opinion established a *prima facie* case against the reasonableness of the western rates themselves.

The Southern Railway & Steamship Association was a traffic association embracing substantially all the railway lines operating south of the Potomac and Ohio and east of the Mississippi rivers, and also steamship lines operating between north Atlantic ports and various southern Atlantic and Gulf ports. This southern territory is bounded upon the east by the Atlantic Ocean, on the south by the Gulf of

Mexico, and upon the west by the Mississippi River. The Ohio and Potomac rivers upon the north introduce an element of still further water competition. This territory is penetrated by rivers from the ocean and from the Gulf which permit water transportation to many points far inland. All this has from the first created a rate situation which was difficult to deal with, and which early induced attempts to establish by conventional means relative rates to various southern points. The Southern Railway & Steamship Association was one of the earliest and the most complete organizations of its kind.

Traffic from northern territory into this southern territory in 1878, originated mainly north of the Potomac and Ohio and east of the Mississippi rivers. The Southern Railway & Steamship Association undertook to divide this northern territory by a line drawn north and south and to determine that all traffic originating to the west of that line should move into southern territory via the Ohio River crossings, while traffic originating to the east of the line should move through the Virginia gateways or by water to southern ports like Charleston and Savannah and thence by rail.

The movement of this traffic from northern territory into the south was covered by southern classification which consists of six numbered and seven lettered classes. The numbered classes embrace for the most part manufactured articles, while the lettered classes generally include products of animals and of the soil. At that time articles moving under the lettered classes originated almost entirely in the west, while the bulk of articles moving under the numbered classes was produced in the east. The complainants in the original cases claimed that the Southern Railway & Steamship Association, for the purpose of carrying out this division of territory, established rates upon the lettered classes into southern territory which were relatively low, and rates upon numbered classes which were relatively high from western territory, while from eastern territory the reverse was true, rates upon the numbered classes being relatively low and upon the lettered classes being relatively high. The purpose of this was to permit and encourage the movement of manufactured articles from the east and to prohibit and discourage the movement of such articles from the west.

The Commission seems to have sustained this contention of the complainants.

On page 246 of the report it is said :

The fact, which clearly appears, that rates on the numbered classes from central territory are made higher *than they otherwise would be*, for the purpose of securing to the eastern lines the transportation of that traffic from the territory set apart to them under the Southern Railway & Steamship Association agreement, itself raises a *prima facie* presumption of the unreasonableness of those rates.

The great influence of this fact appears all through the opinion of the Commission; nor can there be the slightest doubt that if the fact was as found by the Commission the conclusion must follow. The question then as now was upon the reasonableness of the rates. If the present rates are reasonable it makes no difference by what motive they were induced, but the present relation in these rates has existed for thirty years, and the rates themselves have stood in substantially their present form for a quarter of a century. If at the outset these carriers deliberately and intentionally established rates upon the numbered classes from the Ohio River and the central west which were higher than they otherwise would have been for the purpose of preventing the movement of manufactured articles from that section of the country and confining that movement to eastern lines this certainly shows conclusively that the rates when established were not just and reasonable, and in view of such fact this Commission should carefully inquire whether that injustice has been perpetuated, and if it has been should take every possible means to remove it. We inquire therefore, at the outset whether it was the original intention to establish upon these six numbered classes rates which were relatively higher from the west than from the east in order that the manufacturer of the east might find a market in this southern territory.

From territory north of the Potomac and Ohio rivers and east of the Mississippi River two possible routes were available to nearly all southern destinations, the one to the Atlantic seaboard, from thence by water to some southern port, and from thence by rail to the interior destination; the other all rail through the various Ohio River crossings. There was also the all-rail route through the Virginia gateways, which in general corresponded with the rail-and-water route first described.

The first railroads to be built in the south were from the seaboard to the interior, and the first movement of traffic by rail from both the east and the west to southern points, like Chattanooga, was via water and rail. When rail lines were extended from the Ohio River into this southern territory, and therefore began to bid for that business which had formerly gone by the eastern routes, a fierce contest between these rival lines sprang up. Traffic would be taken, for example, from St. Louis, carried by rail to New York, from thence by water to Savannah, and again by rail to Meridian, Miss., a total distance of more than 2,000 miles, whereas it could have been hauled by the Mobile & Ohio in a direct line from St. Louis to Meridian, a distance of 512 miles. So traffic originating at New York might be taken west to Chicago and thence south to Atlanta, instead of being carried by the direct water line from New York to Savannah and thence to Atlanta. All this resulted in a great waste of transportation energy

and in a demoralization of rates which seriously affected the revenues of the carriers.

For the purpose of correcting this situation the Southern Railway & Steamship Association, in connection with northern lines, divided the northern territory by line drawn from Toronto through Buffalo and Pittsburg to Huntington, W. Va. The communities located upon this line, and known as the Buffalo-Pittsburg zone, were to be regarded as neutral territory. It was further recognized that traffic originating in all this western territory might with propriety move through North Atlantic ports to South Atlantic ports, and also into a narrow fringe of territory in the south along the Atlantic Ocean, and that traffic originating even in the east might move through the Ohio River gateways to certain portions of the western part of southern territory. Broadly speaking, however, the decree of the Southern Railway & Steamship Association was that traffic originating to the west of the Buffalo-Pittsburg zone should move into southern territory via the Ohio River crossings, and that traffic originating east of this zone should move into southern territory via the Virginia gateways and the Atlantic ports.

This division of territory was enforced by the withdrawal of all through rates between the prohibited territories. Eastern lines declined to make through rates from west of the Buffalo-Pittsburg zone into southern territory, and western lines declined to join in through rates into the south via Ohio River crossings from eastern points of origin. When traffic moved otherwise than as dictated by this division of territory the respective lines agreed to apply to it their local rates, and in every possible way embarrass that movement.

The proposition to effect this division of territory seems to have been first formally made in 1878. The earliest definite suggestion of this sort which may be termed official seems to be found in the proposition made by John B. Peck, the general agent of the Southern Railway & Steamship Association, in October of that year. This was followed by various suggestions and resolutions at different meetings of the association and of various committees. The proceedings of the association were kept in great detail, have been published, and are made a part of this record.

The final meeting for the purpose of putting in the rates themselves was held at Nashville December 12 to 18, inclusive. At that meeting the eastern lines submitted a report containing the following resolutions:

*Resolved*, That we find it necessary to abandon that feature in the Atlanta Convention committee's report in regard to distinguishing between exclusively eastern articles and articles manufactured both by the east and west. We therefore recognize all numbered classes and Class A as common to both east and west, and all lettered classes, except Class A, as peculiar to the west.

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Rates to Augusta and to other interior Green Line points from Louisville and Baltimore to be the same on all numbered classes and Class A.

The western lines also submitted a report containing among other things the following statement:

The western committee recognize that the tariff which would result from exclusive eastern, exclusive western, and common articles, as unusual and cumbersome, and if it can be simplified consistently with all interests they will approve such action.

Rates to Augusta and other interior Green Line points shall not be less from Louisville than from Baltimore, to the same points upon all numbered or lettered classes.

The whole subject was referred for final decision to the general commissioner of the association who decided:

That all distinctions between articles common to the east and west and peculiar to the east, be abrogated, and the classes 1, 2, 3, 4, 5, 6, and A to be considered common to all lines.

On all classes the rates from Louisville to Dalton, Rome, and Atlanta shall be the same as rates established by the eastern lines from Baltimore to the same points.

It will be seen, therefore, that the final conclusion of this whole matter was that all articles moving under the numbered classes and Class A should be regarded as common both to the east and to the west. At no time was there any suggestion that higher rates from the west than the east should be imposed upon such articles, but only upon those articles which were exclusively the product of the east.

In the original case the operations of the Southern Railway & Steamship Association were mainly relied upon by the complainants to establish a ground for relief. It was claimed that this association was virtually a conspiracy in which eastern lines outvoted and outweighed western lines, and by which, therefore, an adjustment of rates was established and maintained which was unduly favorable to the stronger eastern lines. The proceedings of this association were all before the Commission and were fully considered. The exact theory upon which the Commission actually decided those cases does not seem to have been foreseen by either party upon the hearing, nor did the defendants apparently apprehend the importance which would be placed in the decision of the Commission upon this particular point, which was not, therefore, fully developed in the hearing before the Commission.

It has already been noted that suit was brought by the Commission to enforce compliance with its order, and as the law then stood this involved a retrial *de novo* by the court of all contested issues of fact. Some testimony was taken by the Commission and much by the defendants.

Certain merchants doing business at Cincinnati also brought proceedings in equity against lines leading from Cincinnati south to compel a more favorable adjustment of rates from Cincinnati into southern territory, the title of this suit being *Shinkle, Wilson & Kreis Co. v. L. & N. R. R. Co.*, 62 Fed. Rep., 690; 76 Fed. Rep., 1007. In this suit much testimony was taken both by the complainants and by the defendants.

In both the above cases the point which we are now considering was fully gone into in testimony by the defendants. A considerable number of railroad officials, originally identified with the agreement of 1878, were produced as witnesses. Some of these persons have since deceased and in such cases the depositions formerly taken for use in the circuit court have been introduced into this record. If the witness was still living, we required his production in person upon the hearing of this case, and several witnesses were produced and examined orally upon that point. The testimony of these witnesses is all explicit that no understanding or agreement of the kind found by the Commission was ever entered into. The managers of lines leading from the Ohio River south earnestly insisted that they did not make and that they would not have made any agreement by which the growth of manufacturing enterprises upon their lines should be stifled. So far as testimony can establish any fact it is now established by that in this record that rates upon the numbered classes were not in 1878 intentionally made higher relatively from the west than from the east.

The rates themselves are pointed to as absolutely conclusive in favor of the contention of the defendants. We have seen that this proposition was under consideration during the summer and fall of 1878; that the final meeting was held about the middle of December that year. The rates themselves were made effective January 15, 1879. It will be remembered that, according to the terms of the agreement, rates from Louisville to Atlanta and Atlanta territory were to be no higher than from Baltimore upon the six numbered classes. The rates then established, according to the testimony of Mr. Peck, from Baltimore and Louisville to Atlanta were as follows:

From—	Classes.												
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.	G.
Baltimore .....	\$1.19	\$1.04	\$0.74	\$0.71	\$0.56	\$0.41	\$0.26	\$0.41	\$0.41	\$0.41	\$0.56	\$0.77	\$1.26
Louisville .....	1.19	1.04	.79	.71	.56	.41	.30	.48	.49	.44	.48	.83	1.32
Baltimore, lower .....							.04	.07	.08	.03	*.06	.11	

\* Higher.

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The claim of the complainants is that rates upon the numbered classes were relatively high from the west and upon the lettered classes relatively low from the west, while from the east the numbered classes were low and the lettered classes were high, yet it seems from an examination of the above rates that exactly the reverse was true. While the numbered classes were the same from Baltimore and Louisville, all lettered classes except E were lower from Baltimore.

The rates then established to Chattanooga from New York and Chicago were, according to the testimony of Mr. Peck, as follows:

From—	Classes.											
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.
New York.....	\$1.25	\$1.10	\$0.85	\$0.75	\$0.60	\$0.45	\$0.30	\$0.45	\$0.45	\$0.60	\$0.60	\$0.85
Chicago.....	1.15	1.00	.86	.58	.51	.48	.39	.60	.48	.45	.50	.90
New York, higher.....	.10	.10		.17	.09					.15	.10	
New York, lower.....			.01			.03	.09	.06	.03			.06

It will be seen here that the rates upon four of the six numbered classes were distinctly higher from New York, upon two of those classes slightly lower, while upon two of the lettered classes they were higher and upon four of the lettered classes lower.

The principal traffic from the west to these southern points was then and has continued to be products of animals and of the soil moving under the lettered classes, and the competition between lines carrying this traffic has probably resulted in a reduction of rates upon the lettered classes from the west, while such rates, not being of great importance from the east, have remained substantially stationary. It will also be noticed that under competitive conditions rates to-day have come to be slightly lower to Chattanooga, first class, from New York than from Chicago.

There was in the proposition of October, 1878, and in some of the subsequent proceedings the suggestion that certain articles were exclusively manufactured in the east and that upon such articles prohibitive rates should be charged from the Ohio River, but the final conclusion was otherwise. To these proceedings of December apparently no reference was made before the Commission. The rates themselves, which were published in January, 1879, were not in evidence. The testimony of those witnesses who had entered into that arrangement upon the part of the railroads was not produced upon the original hearing. Upon the record as then made the finding of the Commission was natural, but a contrary conclusion must follow from the record now before us.

It is possible that the rates established *did* in fact then discriminate against the west. It is possible that though fair at the outset



subsequent changes in condition may have made them unfair. These are different questions. We only note here that there was no intention upon the part of those who framed this adjustment to make such discrimination. In examining the issues presented we must not set out with that bias.

Two questions are presented for decision, first, Do rates upon the numbered classes to Chattanooga discriminate in favor of the east as against the west, and, incidentally, has this Commission jurisdiction to correct that discrimination in this case if found to exist and to be undue? Second, Are the rates upon these numbered classes from Cincinnati and Chicago to Chattanooga unreasonable considered in and of themselves?

The complainants support the charge of discrimination by reference to the rates and distances in force from northern points to Chattanooga as compared with rates and distances from Cincinnati and Chicago to that point. Below is given a table showing these rates and distances and percentages of rate and distance from New York as compared with Chicago and Cincinnati.

*Rates to Chattanooga.*

From—	Distance.	Classes.												
		1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.	H.
	<i>Miles.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>
Cincinnati.....	338	76	65	57	47	40	30	20	29	25	21	34	42	39
Chicago.....	595	111	95	79	62	53	40	32	41	35	31	47	62	54
New York.....	847	105	93	83	68	56	44	36	48	40	39	58	78	60
Philadelphia.....	756	105	93	83	68	56	44	36	48	40	39	58	78	60
Boston.....	1,082	105	93	83	68	56	44	36	48	40	39	58	78	60
Baltimore.....	659	98	87	78	63	52	41	34	45	37	36	55	72	57

*Percentage of distances and of classes.*

	Distance.	Classes.													
		1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.	H.	
		Per cent.	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.	
Chicago of New York....	70	106	102	95	91	96	91	89	85	87	80	81	79	80	
Cincinnati of New York..	40	72	70	69	69	73	68	56	60	62	50	59	54	65	

An examination of this table will show that the rate per mile is much lower from the east than from the west. The distance from Chicago to Chattanooga is but 70 per cent of that from New York to Chattanooga, while the first class rate is 106 per cent. The distance from Cincinnati is but 40 per cent, while the first-class rate is 72 per cent. It is apparent that if distance is to be taken as the standard,

rates from the complaining cities are much higher than from their rival trade centers upon the Atlantic seaboard.

The defendants concede the accuracy of the above figures, but insist that the rates from the east are forced by water competition and can not, therefore, be taken as the standard by which to determine a reasonable rate or from which to draw the inference that the discrimination is undue. These distances and rates are all-rail, while traffic from the east moves largely by ocean and rail and while the rates are entirely dictated by those routes.

No question is made but what traffic can move from the various north Atlantic ports to interior southern points by ocean to the southern port and by rail from the southern port. The bulk of the traffic actually moves in that way. With respect to most of this territory the rail rates and the ocean-and-rail rates are the same, but in case of territory lying near the Atlantic seaboard the all-rail rates are somewhat higher. It can not be doubted that the ocean-and-rail transportation charges do absolutely fix the charge which all-rail lines can make and do therefore determine the rates from these northern ports to southern territory.

This being so, it is plain that the all-rail rates from eastern points of origin can not properly be compared with all-rail rates from the west to corresponding destinations in the south. It is 12,000 miles from New York around Cape Horn to San Francisco, and still rates by that route for years absolutely fixed the rate which rail carriers could make for a haul of 3,000 miles across the continent. The present Tehuantepec route involves an ocean carriage of more than 4,000 miles, a rail carriage of about 175 miles, and two transfers between ship and car. The Commission has recently established as reasonable for a distance of 1,500 miles, from St. Paul to Spokane, rates higher than those made by this route between New York and Pacific coast terminals. In order, therefore, to determine whether these rates from the west are too high, as compared with these water competitive rates from the east, some different basis of comparison must be found.

The testimony shows that steamship lines operating between the north Atlantic ports and these south Atlantic ports, accept for their portion of the through rate an amount based upon an arbitrary mileage, which is 250 miles from New York, Philadelphia, and Baltimore to Savannah, and 160 miles to Charleston. From Savannah to Atlanta the distance is 260 miles. Traffic from New York to Savannah en route for Atlanta moves about 750 miles by water, but the ocean carrier accepts for its division a distance of 250 miles. The defendants insist that if any mileage is to be stated with respect to this ocean and rail traffic, that mileage should be fixed upon the basis of divisions, and this would seem to be reasonable, for if the

water line will accept a division upon that basis, then, so far as the cost of transportation is concerned, New York stands within 250 miles of Savannah or within 510 miles of Atlanta.

Upon this basis the defendants insist that these rates do not unduly discriminate upon a mileage comparison as against the west. When the relation in rates was first fixed, January 15, 1879, Atlanta was the most important point in the south, and the testimony indicates that three-quarters of this competitive traffic was governed by the Atlanta rate. Upon the above basis the distance from New York to Atlanta is 510 miles, the present rate \$1.05, while the distance from Cincinnati is 474 miles, with a first class rate of 98 cents, and from Chicago, 769 miles, with a rate of \$1.38. If distances are to be computed on this basis and if Atlanta is to be taken as a typical southern point, it is evident that there is no discrimination in favor of the east.

An exhibit has been filed showing distances constructed in this manner from New York, Baltimore, Cincinnati, Louisville, and Chicago to Atlanta, Macon, Milledgeville, Augusta, Columbus, Albany, Chattanooga, Knoxville, Birmingham, and Montgomery; and defendants state that these are fairly representative points. The average distance from New York to such points is 530 miles, the average rate, all classes, 70.8 cents, the average rate per ton-mile 0.0267. The average distance from Cincinnati is 507 miles, the average rate 69.6, the average rate per ton-mile 0.0274. The average distance from Chicago is 765 miles, the average rate 91.4, the average rate per ton-mile 0.0239.

If reference be had to Chattanooga alone it is plain that, construing distances even upon the basis claimed by the defendants, the rate to that city is too high from the east on a mileage standard as compared with Cincinnati and the west, and it is probable that the same is true of other points in different parts of the south where competitive conditions have forced a lower rate from the east without reference to the west.

If the discrimination exists as alleged by the complainants, is it undue and have we jurisdiction to correct it? The complainants have selected Chattanooga as the only point in the south to which reference is made by them, and this locality probably presents their view more strongly than any other. Let us consider that, without, however, conceding that this whole situation is to be condemned if found unlawful to Chattanooga alone.

First, a word as to the entire situation. Railroad lines in the south were first constructed from the Atlantic seaboard to the interior. Communication between interior cities and eastern cities, like New York, was first established by ocean to the south Atlantic port and by rail from that port. Chattanooga itself, though lying far

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to the north among the mountains and 400 miles from the ocean, was first reached by rail in this way. The early means of communication established business connections between the east and the south which have always continued and which, though daily lessening, are still important. Business enterprises in the south have been largely fostered by eastern capital. When the northern lines from the middle west penetrated this territory it was natural that the transportation lines from the east and the business houses in the east should exert themselves to maintain their hold upon this business.

It is also true that competition between lines from the east was extremely active. Distance upon the water is less a factor than upon the land. Norfolk, Charleston, and Savannah could be reached from New York at practically the same cost. From these different ports different independent lines of railway served the same city and also different cities. Chattanooga furnishes an excellent example. The Norfolk & Western Railroad in connection with the Southern Railway handles traffic from Norfolk to Chattanooga but not to Atlanta. Various lines lead from Savannah and Charleston to Atlanta which do not reach Chattanooga. Atlanta and Chattanooga are both distributing centers. If the goods are distributed from Chattanooga the Norfolk & Western can participate in that transportation; if from Atlanta it can not. Hence that road has insisted for many years that the rate from the east to Chattanooga shall be no higher than to Atlanta.

In 1905 rates from the east to Atlanta were reduced, first class, from \$1.14 to \$1.05. The Norfolk & Western immediately followed by a similar reduction to Chattanooga. The reduction at Atlanta had been due to a previous reduction of the same amount by lines reaching Atlanta from the Ohio River, but the rate to Chattanooga from the Ohio River had been left the same, thus aggravating the discrimination against Cincinnati. It seemed to the commissioner who heard this case that under these circumstances there was no warrant for the reduction from the east to Chattanooga and he called the traffic representative of the Norfolk & Western and inquired of him why the reduction had been made, and if it would be insisted upon. The answer was, that his company believed it necessary to maintain the same rate from the east to Chattanooga as was established to Atlanta and that it must insist upon that policy.

Can it be said that the action of the Norfolk & Western created an undue discrimination against Chattanooga? It has no connection with rates from Cincinnati to that locality. It does not base this rate from the east upon the rate from the Ohio River. It simply declares as a matter of policy that it will maintain to this city whatever rate its rival line makes to a rival city. Is not this legitimate

competition? Is it not the kind of competition which the act to regulate commerce itself aims to keep alive? Is it the province of this Commission to determine under those circumstances the relation between the rate from New York to Chattanooga and that from Cincinnati to Chattanooga; and if so, what shall its order be and how will it enforce it?

So of this whole southern situation. The eastern lines have decided to maintain a certain relation of rates between the east and the west upon these numbered classes; have determined that the rate, for example, from Baltimore shall not be higher than that from Louisville to certain points. In 1905, for reasons which have appeared in various cases and which need not be gone into here, lines leading from the west reduced their rates from the Ohio River and the middle west to Atlanta and various other points in the south, the reduction first class being 9 cents. Eastern lines immediately met these by corresponding reductions. Assume that before the reduction by the western lines there had been a discrimination in favor of the east of 9 cents, first class, which was removed by the reduction from the west and which was restored by the subsequent reduction from the east. Can it be said that this discrimination which now exists is undue? What in the act to regulate commerce prohibits these independent lines from exercising their right to maintain that relation in rates?

In the original case the Commission declined to exercise this jurisdiction. All railroad and steamship lines operating in southern territory were made parties to that proceeding, but it appeared that one set of carriers handled traffic from the east and another distinct set from the west. There was no single defendant which made these rates both from the east and from the west.

The case as now presented in this respect is different from the old case. There is to-day no traffic association which determines these rates; at least not nominally. Rates are the individual acts of the several defendants, but upon the other hand there is now here, as the complainants insist, a single defendant which names rates both from the east and from the west.

The proceeding in the Cincinnati case is directed solely against the Cincinnati, New Orleans & Texas Pacific Railway Company and the Southern Railway Company; and the Chicago case makes only these lines defendants south of the Ohio River. The Cincinnati, New Orleans & Texas Pacific Railway names the rate from Cincinnati to Chattanooga, and the Southern Railway publishes a rate from the east to Chattanooga. The Southern Railway owns a majority of the stock in the corporation which controls the operation of the Cincinnati, New Orleans & Texas Pacific Railway, and the same individual is president of both companies. The complainants insist that these two railroads are under the circumstances virtually one; that

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this case stands as though the line from Cincinnati to Chattanooga were operated directly by the Southern Railway Company, in which event rates to Chattanooga would be made both from the west and from the east by the same company.

The testimony shows that while the Cincinnati, New Orleans & Texas Pacific is ordinarily regarded as a part of the Southern Railway system its operation is in fact entirely distinct from that of the Southern Railway. The officers of the Southern Railway have no control whatever over those of the Cincinnati, New Orleans & Texas Pacific and could not legally dictate the action of the latter company. The Southern is the owner and can of course finally secure such action upon the part of the Cincinnati, New Orleans & Texas Pacific as it may desire.

In the so-called *Commodities case* recently decided by the Supreme Court of the United States, *U. S. ex rel. The Attorney-General v. Delaware & Hudson Co.*, 213 U. S., 366, it was held that a railroad company owning a majority of the capital stock of a coal company and really controlling through that stock the operations of the coal company had no interest, direct or indirect, in the coal mined by the coal company. It is certainly doubtful whether in view of this decision it can be affirmed that there is such a connection between the Southern Railway and the Cincinnati, New Orleans & Texas Pacific that these two companies can be held responsible under the third section for the rates of one another. It seems probable that we must under this construction of the law dispose of this case as though these two companies were distinct in fact as well as in name and in operation, and if this is so the case stands before us to-day as it did in 1894.

It is, however, true that the Cincinnati, New Orleans & Texas Pacific is operated in harmony with the Southern Railway; that its rates and its policies are dictated by that company; and that the Southern Railway has practically the same authority to reduce this rate from Cincinnati to Chattanooga at present as it would have if it operated the line under its own name. This Commission has been inclined to look to the substance rather than the form in a case like this, *Eichenberg v. Southern Pacific Co.*, 14 I. C. C. Rep., 250. But here we doubt whether, if the Southern Railway itself operated this line from Cincinnati to Chattanooga, we ought to hold it responsible for this relation of rates. The Southern Railway is but a single carrier among all those serving this territory. It can not, whatever effort it may make, control that situation. It must bow to the competitive conditions which exist.

The second question presented by this record is upon the reasonableness of these rates from Cincinnati and Chicago to Chattanooga and indirectly into this entire competitive territory. The chief contention of the complainants is that these charges are extortionate in view of 18 I. C. C. Rep.

the circumstances under which the service is rendered, but there is a preliminary matter bearing more remotely upon this issue of reasonableness which may be first referred to.

It is a maxim of rate making that the rate should be such, if possible, as to move the traffic. Within certain limits a railroad is bound to protect its territory, and within those limits this Commission may consider the rates and their effect upon the movement of traffic. The east and the west find a common market in this section of the south, and in determining whether the present rates from the west are reasonable one subject of inquiry is the movement of traffic under the present rates. It has been fifteen years since the former case was decided, and during all that time these rates have continued in effect. How has traffic actually moved under them from these two sections?

For the purpose of answering this question, the Commission required the carriers to take the months of March and September in 1907, and to show from their original records the actual movement of tonnage into this competitive territory, which was said to be the states of Georgia, Alabama, Mississippi, and, generally speaking, territory south of and including points upon the Memphis division of the Southern Railway and east of and including the main line of the Mobile & Ohio. These two months have been assumed to be representative of the entire year and the totals stated upon that basis.

This information has been compiled both with respect to the territory mentioned and also with respect to the city of Chattanooga alone. Without giving the details, these statements show that, excluding classes B, C, D, F, as above, 63.57 per cent of the entire tonnage into Chattanooga moves from points north of the Ohio and from the Ohio River crossings via western lines, and 36.43 per cent from eastern points via eastern lines. Taking the movement into the whole territory we find that 65.36 per cent moved via western lines and 34.64 per cent via eastern lines. It appears, therefore, that under the operation of these present rates western lines carry nearly twice as many pounds of those articles known as manufactured articles and general merchandise as do lines from the east.

The complainants criticised these statements and disputed their value in two respects. The statements did not include the movement of traffic from southern coast cities to the interior, which the complainants contend ought to be embraced. Quantities of merchandise are brought by water to southern ports at water rates and are distributed from there at the regular local rates, which are usually rates fixed or controlled by the railroad commissions of these South Atlantic States.

We are unable to see why this traffic should be embraced. The water rates upon which it moves are not subject to the jurisdiction of the Commission. The railroad rates are not in controversy in this

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proceeding. The movement of this traffic is not induced by the rates before us, but is in spite of those rates. We are not inquiring whether the east or the west sells in this territory, but whether these rates are such as to induce an abnormal movement of traffic. The carriers were, however, required to produce this statement, and it appears that the tonnage moved from the coast cities to this territory is about 50 per cent of the entire movement from the east, as above stated.

The second criticism of the complainants is that the statements showing the movement of traffic from the west are not properly constructed. These statements embrace the movement of all articles classified under the Southern Classification except B, C, D, F, which as already said embrace products of the soil and of animals which are for the most part peculiar to the west. A considerable amount of this traffic moved at commodity rates, which are lower than the class rates applicable to the article. The complainants insist that only such traffic as moves under the class rates themselves ought to be included.

The question is whether the west has a fair rate for the movement of its manufactures and merchandise into the south. The defendants claim that the manufacturer and the merchant of the west has been taken care of by special commodity rates to a much greater extent than in the east. In 1894 there were upon the articles embraced in these classes but 31 commodity rates; in 1908 this number had increased to 121. The defendants were required to file a second statement showing the movement at class rates and the movement of manufactured articles and merchandise at commodity rates, from which it appears that nearly one-half the tonnage of these articles moving from the west is at commodity rates, while from the east the movement is largely under class rates. It also appears from this statement that the movement under first and second class rates is larger from the east than from the west, although the entire movement under class rates is larger from the west than from the east.

The fair inference from all these statements seems to be that this relation in rates between the east and the west which has been in effect for the last third of a century does not to-day abnormally promote the movement of traffic from either section.

This brings us to the inherent reasonableness of these rates themselves. Neither the east nor the west has any vested right to sell a certain amount in this southern territory. Each section is entitled to a reasonable rate and to do what business it can under that rate. The complainants insist that these rates from Cincinnati to Chattanooga, considered as transportation charges for the service rendered, are too high. It is this point upon which the complainants mainly rely and which presents the most doubtful and difficult question for determination.



The position of the complainants is this. They select rates from Cincinnati in all directions, except to points south of the Ohio River, for distances of from 300 to 350 miles and show that these rates in no case exceed 60 cents first class, and are often as low as 40 cents. They now compare the financial operations of the Cincinnati, New Orleans & Texas Pacific with the various railroads upon which the rates used as standards of comparison are made and also with the average result in the territorial groups in which those rates prevail. The claim is made that rates upon the Cincinnati, New Orleans & Texas Pacific ought to be as low or lower than those in territory north of the Ohio River and that therefore the present rates are excessive.

The railroad leading from Cincinnati to Chattanooga, and now operated by the Cincinnati, New Orleans and Texas Pacific Company, is the Cincinnati Southern. It was constructed by the city of Cincinnati, being opened for business about the year 1880. The original cost of the railroad was \$18,000,000, and the city subsequently expended in terminal facilities about \$2,500,000, making a total cost of \$20,500,000.

The city of Cincinnati had legislative authority to build but not to operate this railroad, and the Cincinnati, New Orleans & Texas Pacific Railway Company was organized for the purpose of leasing and operating the Cincinnati Southern Railroad. The first lease was for twenty-five years and expired in 1906, but this lease was extended by popular vote in the year 1901 for a term of sixty years, so that the present lease expires in 1966. The rental under the original lease was \$1,250,000 per year, or about 6 per cent upon the cost of the property. The rental under the present lease during the first twenty years of the term is \$1,050,000 per year, somewhat more for the balance, thus yielding a return in excess of 5 per cent upon the cost of the property. The city borrows this money for  $3\frac{1}{2}$  per cent, thereby making a clear profit of  $1\frac{1}{2}$  per cent upon the investment.

Cincinnati is 114 miles northeast of Louisville. Previous to the construction of the Cincinnati Southern all business for Chattanooga and the south and southeast passed through Louisville, and the rate was a differential above that from Louisville. Cincinnati was therefore obliged to pay upon all traffic to this its best market a higher transportation charge than its rivals upon the Ohio River. The purpose of constructing the Cincinnati Southern was to obtain a line from Cincinnati to Chattanooga which should be no longer than the line from Louisville, and which would therefore insure to that city the same rate to Chattanooga and all points in the south and southeast reached through that gateway which was enjoyed by Louisville. Immediately upon the opening of the Cincinnati Southern the rate from Cincinnati to Chattanooga was made the same as that from Louisville, and this relation has ever since been maintained; so that

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the city to-day, in addition to the profit upon its investment of  $1\frac{1}{2}$  per cent, secures all the advantages contemplated by the construction of the railroad.

At the end of the term the railroad with all its betterments reverts to the city. In order to handle the business now offering over this road it has already been found necessary to expend large sums in double tracking and otherwise improving the physical condition of the property.

This railroad must inevitably be much more valuable in 1966 than it is to-day and these betterments will at that time belong to the city of Cincinnati, which is another source of profit from this enterprise. The investment has therefore proved a fortunate one for that community.

The Cincinnati, New Orleans & Texas Pacific Company was unable to pay the rental provided for a time and was in the hands of a receiver from 1893 until 1899. Since that time it has paid the stipulated rental and has shown very handsome returns from operations as well. This property to-day is unique among railroads in the south. Its gross earnings per mile for the year 1907 were over \$26,000, more than the average gross earnings of the railroads in any group in the United States and more than the gross earnings of most railroad systems in the United States. It carried during the year 1907 more tons of freight one mile than the average in any group in the United States. Its tonnage and its gross earnings per mile were nearly four times those of the Southern Railway, by which it is controlled.

The grades of this railroad are heavy, exceeding for 38 per cent of its distance a 1 per cent grade, and the cost of operation and maintenance is high, but nevertheless its net earnings, computed upon the basis prescribed by the Interstate Commerce Commission, have for several years last past reached \$7,000 per mile. If it is our duty to take this railroad by itself and to determine the reasonableness of these rates by reference to cost of construction, cost of maintenance, and profit upon the investment, we think the complainants have established their case and that these rates ought fairly to be reduced by as great an amount as was formerly found reasonable by this Commission.

The defendants insist that this ought not to be done because of the financial necessities of the Cincinnati, New Orleans & Texas Pacific Railway Company growing out of the peculiar relation of that company to this property.

This corporation has a preferred stock of \$2,500,000 upon which cumulative dividends of 5 per cent are payable, and common stock of \$3,000,000. All this stock represents a cash payment at par, as we understand the testimony. The dividend has been paid upon the

preferred stock and during later years a small dividend has been paid upon the common stock.

The company owns the equipment but has no interest in the railroad beyond the right to use it for the stipulated term. If, therefore, it is found necessary to reconstruct a bridge or lay an additional track, the company can not pledge that bridge or track for the necessary money with which to make the improvement.

The testimony shows that in order to handle the business offering it has been necessary already to expend large sums in the improvement of the roadway and structure, and that further large sums must be expended in the future. This money, say the defendants, can only be obtained from income from operation, and hence a sufficient rate should be allowed to permit the making of these necessary additions.

This position is not well taken. A railroad is entitled to a fair return upon the value of the property devoted by it to the public use, but it is not entitled to have that property paid for by the public. This Commission has so decided in *Central Yellow Pine Asso. v. I. C. R. R. Co.*, 10 I. C. C. Rep., 505, and the Supreme Court has affirmed the correctness of that holding. *Illinois Central R. R. Co. v. Interstate Commerce Commission*, 206 U. S., 441. If these stockholders have entered upon this enterprise without the means to provide necessary funds with which to carry it on, that can be no reason for the imposition of rates otherwise unreasonable.

The defendants also contend that these rates should be fixed not only with reference to the financial results and the financial necessities of the Cincinnati, New Orleans & Texas Pacific Company, but also with reference to other companies whose rates are necessarily affected by these; otherwise stated the Commission should establish rates which are just and reasonable for the section in which they prevail; if a particular company is so situated that it can make a handsome profit under such rates, that is the good fortune of that company just as it would be the misfortune of some other company if it could not show as favorable earnings.

The rate from Cincinnati and Louisville to Chattanooga has been the same for the last twenty-eight years. The distance is substantially the same, and this relation in rates will undoubtedly be maintained in the future. Whatever reduction is made from Cincinnati will be met by corresponding reductions from other Ohio River crossings. Rates from Memphis to Chattanooga are lower by a fixed differential than from the Ohio River, and this relation would undoubtedly be preserved, and perhaps ought to be, since the distance is 300 miles as against 336 miles from Cincinnati.

In the original case the Commission ordered reductions to many other points besides Chattanooga. While Chattanooga is the only southern point of destination referred to in these complaints, it is

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frankly stated that the purpose is to obtain a general reduction to this southeastern territory; and no reason is apparent why, if the Commission adheres to its former decision in case of Chattanooga, it ought not to do the same in case of other localities in this territory. It will be remembered that in 1905 certain reductions were made from the Ohio River to Atlanta without any corresponding reduction to Chattanooga. Originally, the same rate had been made to Atlanta from Louisville as was made from Baltimore. After the opening of the Cincinnati Southern this same rate was applied from Cincinnati to Atlanta, and the rate from Cincinnati to Chattanooga was constructed by using the same rate per mile, although the distance was shorter. At the present time the rate per mile is greater in case of Chattanooga than in case of Atlanta. The defendants say that the present rate is constructed upon the proper basis, and that the reductions made to Atlanta could not be applied to Chattanooga without undoing what was accomplished at that time, for the following reasons:

The reductions of 1905 grew out of the claim upon the part of Atlanta that its rates from the north were too high in comparison with Birmingham and Montgomery. By that readjustment Atlanta was made the same as Montgomery and the difference between Atlanta and Birmingham reduced.

The distance from Memphis to Birmingham is 251 miles, from Memphis to Chattanooga 300 miles, from Cincinnati to Chattanooga 336 miles. The rate from Memphis to Chattanooga has always been somewhat less than that from Cincinnati, in recognition of the shorter distance, and the St. Louis & San Francisco Railway insists that the rate from Memphis to Birmingham shall not materially exceed the rate from Memphis to Chattanooga, which seems reasonable in view of the fact that the distance is 50 miles shorter. If, now, this rate from Cincinnati to Chattanooga is reduced, that will in all probability carry with it a reduction from Memphis to Chattanooga, which will involve a corresponding reduction from Memphis to Birmingham, and this will create the same discrimination out of which the reduction of 1905 came. This would mean a reopening of that contest.

It must also be remembered that any reduction from the north to Atlanta and corresponding territory would undoubtedly be followed by similar reductions from the east as was the case in 1905.

It is apparent, therefore, to make any considerable change in this rate from Cincinnati to Chattanooga will work a lowering in rates throughout this entire southern territory, or will produce a change in the relation of those rates which now seem to be adjusted upon a basis fairly satisfactory to that territory. How far are we at

liberty to consider all this in fixing a reasonable rate over the Cincinnati, New Orleans & Texas Pacific. It should be noted that Chattanooga is not complaining of unfair treatment as compared with other southern points.

Some indignation was expressed by several witnesses upon the part of the city of Cincinnati because after that community had expended this enormous amount of money in the construction of the Cincinnati Southern Railroad, that property was not more devoted to the interests of the city of Cincinnati. If that city, under proper legislative authority, had seen fit to operate its railroad, it might have established to Chattanooga whatever rates it saw fit, and if the results of municipal operation had been as favorable as the present, it could have materially reduced those rates and still obtained a fair return upon its investment. Such a reduction would have cheapened the cost of this freight to the dealer and probably in a degree to the consumer, and so might have benefited the ultimate consuming public. It is doubtful if it would have benefited the interests of Cincinnati, since the rates established by it would have been met by carriers serving rival communities, and the relation of rates would have continued the same. However this may be, the city has parted with its right to operate this property, and the matter stands exactly as though this road had been built by private capital.

In *In the Matter of Proposed Advances in Freight Rates*, 9 I. C. C. Rep., 382, the Commission, having under consideration the rates on grain from Chicago to the Atlantic seaboard, announced that the interests of all competing lines must be considered in determining the reasonableness of those rates, and not merely that line which could handle the business the cheapest. In the *Spokane case*, 15 I. C. C. Rep., 376, the same subject was considered and the same conclusion reached. The last affirmation of this doctrine is found in *Kindel v. N. Y., N. H. & H. R. R. Co.*, 15 I. C. C. Rep., 555, in which the rule is stated by Clark, Commissioner, as follows:

In the *Spokane case*, 15 I. C. C. Rep., 376, we held that the reasonableness of a rate between two points, served by two or more carriers, could not be determined by consideration alone of that line which is shortest and most favorably situated as to operation, earnings, etc., but that the entire situation must be considered. \* \* \*

As before suggested, we can not, in determining competitive rates, select that railroad which is the shortest or most advantageously situated, and limit the rate to what would allow that property fair earnings. We must consider the entire situation and determine a reasonable rate not merely with reference to the Union Pacific, but with reference to all lines serving these Colorado points by reasonably direct lines.

We have no doubt as to the correctness of this principle and believe it must be applied here within proper limits.

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The Cincinnati Southern Railroad is a single trunk line without branches, running from Cincinnati to Chattanooga. The main line of the Louisville & Nashville extends from Cincinnati to Louisville, and from Louisville to Nashville. Traffic from Louisville to Chattanooga passes through Nashville, and over the Nashville, Chattanooga & St. Louis to Chattanooga. For the year 1907 the gross earnings per mile of the Cincinnati Southern were, as already stated, over \$26,000 per mile, those of the Louisville & Nashville about \$11,000 per mile, and of the Nashville, Chattanooga & St. Louis less than \$10,000 per mile. The same year the earnings of that portion of the line of the Louisville & Nashville between Cincinnati and Louisville were \$25,000 per mile; between Louisville and Nashville \$30,000 per mile; those of the Nashville, Chattanooga & St. Louis, between Hickman and Chattanooga, a distance of 320 miles, over \$20,000 per mile. Now, in adjusting the rates of the Louisville & Nashville, or the Nashville, Chattanooga & St. Louis, shall the Commission consider each section of the road by itself, or shall it establish a common rate for the whole?

Commission rates are usually the same for all lines, both main line and branches. It is fair that the main line should in a degree contribute to the support of the branch line for the branch-line business when it reaches the main line is surplus traffic from which a larger profit is made. It is in the public interest that rates shall be so adjusted that population and industries may freely diffuse themselves. It hardly seems proper to fix the rates upon the Cincinnati Southern, which is really a main line, without any reference to the branch lines which contribute to it.

This should be further borne in mind. Of the entire traffic handled by the Cincinnati, New Orleans & Texas Pacific in the year 1907, over two-thirds of the tonnage was delivered to it by its connections, and most of it hauled as a through transaction from Cincinnati to Chattanooga or the reverse. Comparatively little traffic originates upon this railroad between these two termini. The present large earnings may be due to the fact that the Southern Railway is able to turn onto this road large amounts of traffic which it would exchange with some other railway but for its interest in the Cincinnati Southern. If the city of Cincinnati were operating this property itself, it is by no means certain that the apparently undue profit of to-day might not be a deficit.

The complainants urge that the Cincinnati Southern is really a part of the Southern Railway system. If it were so considered the gross earnings per mile of the entire system would be less than those of either the Louisville & Nashville or the Nashville, Chattanooga & St. Louis.

If these rates are to be established with reference to other rates in the vicinity it becomes pertinent to inquire how the present rates compare with other rates for similar distances in the south. Extensive tables have been furnished by the defendants instituting such comparisons, and these tables have been to some extent criticised and replied to by the complainants.

It fairly appears that the rates now in effect from Cincinnati to Chattanooga upon the numbered classes are lower than similar rates prescribed by the railroad commissions of most states in the south. They are as low and usually lower than the interstate rates made by southern roads for similar distances.

The complainants call our attention to rates from Cincinnati to Nashville. The distance is 300 miles and the rates are materially lower than those from Cincinnati to Chattanooga, being, first class, 53 cents as against 76 cents, and sixth class, 23 cents as against 30 cents. But this Commission has found, *Chamber of Commerce of Chattanooga v. Southern Ry. Co.*, 10 I. C. C. Rep., 111, and the federal courts have found, *East Tenn., Va. & Ga. Ry. Co., v. I. C. C.*, 181 U. S., 1, that water competition influences these rates to Nashville. The rate from Cincinnati to an intermediate point where there is no water competition is higher in proportion to distance than those to Chattanooga. Thus the first class rate from Cincinnati to Gallatin, 20 miles north of Nashville, is 78 cents.

The complainant also refers to rates from Virginia cities to Atlanta which are less per ton-mile than those in question. But it is well understood that these rates are materially affected by water competition, and ordinarily the long-distance rate should be less per ton-mile than the rate for the shorter distance. If rates from Virginia cities south for distances of from 300 to 350 miles are examined it will be found that they usually equal or exceed the Chattanooga rates.

The complainants urge that the volume of traffic in this territory has increased and is increasing, all of which should make for lower rates; and this is certainly true; but it must also be borne in mind that the cost of operation is advancing. In the past railways have been able to introduce various economies in the handling of their business, which have tended to offset the added cost of labor and supplies, so that the net result has been that the increase in the cost of transporting a ton of freight one mile has but slightly, if at all, increased. It is doubtful if in future similar economies can keep pace with advancing prices.

We hesitate at this time to make widespread and far-reaching reductions in rates where there is no special occasion for it and where the rates themselves are not clearly excessive. In this case, upon a view of the whole situation, we do not feel that the rates

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found to be reasonable in 1894 should be established to-day. We do, however, think that some slight reduction should be made in these rates to Chattanooga. Railroads operating south from the Ohio River are among the most prosperous in this southern territory. In the readjustment of 1905 rates to Chattanooga from the Ohio River were not reduced, although those from the east were. We are of the opinion that the present rates are unreasonable, and that rates should be established upon the numbered classes, not exceeding in cents per 100 pounds the following:

Class----	1	2	3	4	5	6
Rate ----	70	60	53	44	38	29

and it will be so ordered. The complaint of the Chicago Association of Commerce, No. 1562, will be dismissed.

CLEMENTS, *Commissioner*, concurring:

While concurring in the order of the Commission, reducing the rates involved from Cincinnati to Chattanooga, because, although the reductions are slight, they afford some relief, I am convinced that the reductions made do not meet the just demands of the complaint, in view of the facts shown. Nor do I agree to all the statements or the reasoning or conclusions of the foregoing report. And the attempt in these cases, which involve rates from Cincinnati and Chicago to Chattanooga only, to review the report and conclusions in the former cases, which were directed to rates to eight representative southeastern cities, including Chattanooga, makes it necessary in my view to call attention to many matters which either have been overlooked or only partially treated in the present report and which relate to the general adjustment of rates from the northwest to the southeast.

The following table shows, first, the first class rates complained of from Cincinnati to the eight southern points involved in the former Cincinnati case; second, the rates named by the Commission as maxima; and third, the rates now in effect resulting from subsequent reductions by the carriers:

*Rates from Cincinnati.*

To—	Old rates.	Rates named by Commission.	Present rates.
	Cents.	Cents.	Cents.
Atlanta, Ga.....	107	86	98
Anniston, Ala.....	107	86	98
Birmingham, Ala.....	80	87	80
Selma, Ala.....	108	108	108
Knoxville, Tenn.....	76	53	76
Chattanooga, Tenn.....	76	60	76
Rome, Ga.....	107	75	98
Meridian, Miss.....	122	114	106



The following table shows a like comparison of the rates to the same destinations from Chicago:

*Rates from Chicago.*

To—	Old rates.	Rates named by Commission.	Present rates.
Atlanta, Ga. ....	147	126	123
Anniston, Ala. ....	147	126	123
Birmingham, Ala. ....	119	111	114
Selma, Ala. ....	128	128	123
Knoxville, Tenn. ....	116	93	111
Chattanooga, Tenn. ....	116	100	111
Rome, Ga. ....	147	114	123
Meridian, Miss. ....	134	114	118

It will be seen by reference to the first table that the Commission did not condemn the rate from Cincinnati to Selma, and that it ordered a reduction of only 2 cents to Birmingham; that as to Atlanta, Rome, and Anniston the carriers subsequently reduced the rates from 107 to 98 cents, and as to Meridian from 122 to 106 cents, which latter reduction is 8 cents lower than the Commission ordered; and that the rates to Chattanooga and Knoxville are still 76 cents, as they were in 1894, when the former cases were decided.

The second table shows reductions from Chicago to every one of the southern destinations named, ranging from 5 cents to Chattanooga and Knoxville, Selma and Birmingham, to 16 cents to Meridian, and 14 cents to Atlanta, Rome, and Anniston. While these voluntary reductions in most instances show substantial and material action in the direction of the order of the Commission, they show but slight relief as to Chattanooga on shipments from Chicago and none at all on shipments from Cincinnati. They to my mind also largely refute the contention that no change can be made in the rates to Chattanooga without corresponding changes to all points throughout southern territory.

Although there was a distinct charge in the *Chicago case* that the rates were unreasonable both from Chicago and Cincinnati, it is said in the report, in referring to the former cases, that—

the gravamen of the complaint in both cases was that rates upon the numbered classes from the central west represented by Cincinnati and Chicago to various points of consumption in the south were too high, as compared with rates upon the same classes from points of origin in the east to the same destinations. These rates were made by the Southern Railway & Steamship Association, and the theory of the complainants was that the members of this association were jointly responsible for the rates established by the association, and that, therefore, if an undue preference was created by such rates in violation of the third section the Commission might by its order direct the various defendants to cease and desist from such violation of law.

The present report in effect thus apparently treats the allegation of unreasonableness of the rates in the old Chicago complaint as

merely incidental to what is asserted to be the gravamen of the complaint in the present cases. This theory is neither justified by those proceedings nor by the facts presented therein, nor is it true that the complainants then relied only upon comparisons of rates and distances from the east and from the west to these southern points. They relied largely upon a comparison of rates in southern territory with those north of the Ohio River and a comparison of conditions, such as relative density of traffic, etc., and of earnings of these respective carriers, and the conclusion of the Commission that the rates from Chicago and Cincinnati to the southern points therein involved were unreasonable because of the excessive charges from the river south, was based largely upon these latter comparisons.

There is also an apparent purpose to excuse the defendants in withholding from the Commission in the former cases the information they now largely rely upon to impel a different conclusion. This appears in part, as I understand it, from the following language:

In the original case the operations of the Southern Railway & Steamship Association were mainly relied upon by the complainants to establish a ground for relief. It was claimed that this association was virtually a conspiracy in which eastern lines outvoted and outweighed western lines, and by which, therefore, an adjustment of rates was established and maintained which was unduly favorable to the stronger eastern lines. The proceedings of this association were all before the Commission and were fully considered. The exact theory upon which the Commission actually decided those cases does not seem to have been foreseen by either party upon the hearing, nor did the defendants apparently apprehend the importance which would be placed in the decision of the Commission upon this particular point, which was not, therefore, fully developed in the hearing before the Commission.

It also apparently is suggested that although the principal cause of the old complaint was the alleged discrimination in favor of the east on southern traffic because of alleged conspiracy of the eastern and Ohio River lines to the south, these defendants were not put upon sufficient notice to require of them a presentation of all the facts relating to the establishment and adjustment of these rates through the Southern Railway & Steamship Association. As a result we are to accept, it is proposed, subsequent statements regarding certain tariffs said to have been in effect some years prior to the passage of the Interstate Commerce law as conclusive that the defendants did not in fact carry out their openly avowed intention to promote a division of traffic between the eastern and western lines on the basis alleged. This suggestion is made, too, in face of the fact that in 1894, when the old decision was rendered, the rates were adjusted as between the numbered classes and the lettered classes substantially as alleged by complainants. In the old report, speaking as of that date, of course, it was said:

The fact, which clearly appears, that rates on the numbered classes from central territory are made higher than they otherwise would be, for the purpose of securing  
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to the eastern lines the transportation of that traffic from the territory set apart to them under Southern Railway & Steamship Association agreement, itself raises a prima facie presumption of the unreasonableness of those rates.

The following quotations from the former report, which are in the nature of admissions of prominent traffic officials representing western and southern lines, to my mind are conclusive of the influence of eastern lines in preventing the western and southern carriers from charging rates which they have long believed the ends of justice require:

L. R. Brockenborough, general freight agent of the Chicago & Eastern Illinois Railway Company (whose road runs from Chicago to the Ohio at Evansville) stated that "his impression (is) that the general impression seems to be that the rates from central territory into southern territory are out of line with those from the seaboard," and that his road "would be willing to reduce its rate to bring the through rate in line with the New York rate." John C. Gault, general manager of the Queen & Crescent system (in which are defendants the Cincinnati, New Orleans & Texas Pacific and the Alabama Great Southern companies), stated that he "always thought rates from Chicago to southern points on higher classes ought to be the same as those from Boston and New York;" and that this "would not harm New York and hardly be enough in favor of the West." He also, under date of August 14, 1888, wrote to the commissioner of the Chicago Board of Trade, that "the roads interested in Chicago business ought in my (his) judgment to take such action as is necessary to insure a reduction of the rates" from the west. M. C. Markham, assistant traffic manager of the Illinois Central R. R. Co., testified that he had made an effort to have the Southern Railway & Steamship Association reduce the rates from central territory, and said: "Looking at the disparity between the rates from eastern and central territories, it appears there might be in them an element of unfairness to the latter. If it is true that rates from eastern territory into the southeast were made on account of water competition along the Atlantic seaboard, and if all rail lines leading from the east into that territory can afford to carry the goods for those rates made by water lines, then the western through lines could afford to carry for the same rates a less distance, provided all conditions governing the matter were equal." S. R. Knott, traffic manager of the Louisville & Nashville road, in a letter to G. J. Grammar of April 14, 1890, wrote that "While the adjustment may be unfair, as we think it is, yet it can hardly be said to be arbitrary or wholly unreasonable;" and that his company, "together with other lines interested in western traffic, then members of the Southern Railway & Steamship Association, urged a modification of the difference" (between eastern and western rates) "and succeeded in having the matter brought, under the rules of the association, before the board of arbitration;" and that "the question was fully presented from both sides of the case and the decision of the board at that time (May, 1888) was that the best protection of all interests did not warrant the change in the adjustment of rates which we, with the other western lines, had requested; that is, changing the adjustment from Ohio River points and points north as compared with the rates from eastern cities." B. E. Hand, assistant general freight agent of the Michigan Central road, stated that he had made "repeated efforts with railroads operating in southern territory for a reduction of rates on manufactures from the west to the southeast." G. J. Grammar, chairman of the Central Traffic Association's committee on relations with southern roads, in a letter to N. G. Iglehart, of April 2, 1890, says: "All our efforts thus far have been unavailing to get the southern roads to more justly equalize the rates. You doubtless understand southern roads' rates from the Ohio River are arbitrary, their rates on all classes south-bound being from 50 to 100 per cent greater per mile than by lines north of the river on

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similar traffic." In a letter, dated April 8, 1890, to S. R. Knott, he says: "The injustice of the present basis of rates" (from the Ohio) "must of necessity be apparent."

While conceding the accuracy of the rates shown in the report from Chicago-New York and Baltimore-Louisville to Chattanooga and Atlanta, respectively, with respect to this record, I can not agree that a basis is thus fixed upon which to find that a discrimination on the numbered classes from the west was not intended or that a practical division of territory between eastern and western lines was not made on that basis. The present report to a large extent practically seems to be based upon the alleged outcome in December, 1878, at Nashville, of one of the numerous conferences or conventions held by the Southern Railway & Steamship Association during the period of its existence and at a time when the carriers were not required by law to file, post, or maintain any established rates. From the record of the proceedings of that conference it appears that plans were proposed both by eastern and western representatives for a "practicable division of territory on certain articles, and the division was to be protected by certain differences in rates, by the respective lines, that were fixed by the convention." And in view of the statement in the report of the western representatives that "the western committee recognizes that the tariff which would result from exclusive eastern, exclusive western, and common articles as unusual and cumbersome, and *if it can be simplified consistently with all interests* they will approve such action," it by no means can be conclusively accepted that this suggestion related to the rate basis itself rather than to mere details of promulgating the classification. This view is borne out by the method of publishing rates from those sections then used, which required the letters "E," "W," or "C" after the rate to designate, respectively, whether the traffic was exclusively eastern, exclusively western, or common to both sections.

In addition to the resolutions introduced from time to time there are other evidences of intention and agreement to discriminate against the west. In a decision dated November 18, 1892, of the board of arbitration of the Southern Railway & Steamship Association, on a complaint involving the rate basis from certain points to the southeast, it is stated that—

In the relative adjustment between the east and west, the west, by reason of superior natural advantages in nearness to the raw material and cheaper food, is able to hold its preponderance in business at higher rates than the east.

Turning to the testimony of Mr. Peck, it is stated immediately following his statement of rates from Baltimore and Louisville to Atlanta, set out in the report, that—

It will be seen that the rates on all the numbered classes were made the same from both cities and that the western lines charged higher than Baltimore rates on all the  
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lettered classes except "e" and "g," which represented beer and pork and beef in barrels. To this extent, then, there was no preference to either the east or west on manufactured articles of any kind whatever. \* \* \* It is true that the rates from Cincinnati were made higher than those from Philadelphia, and the same is true of St. Louis and Chicago as compared with New York and Boston. So far as Cincinnati is concerned the completion of its railroad to Chattanooga put it on an equality with Louisville, so that its rates need not be further considered. It is true that the rates from St. Louis were made not only higher than New York, but at a higher rate per mile; but this was not caused by any demand of the eastern lines, but because of an expensive transfer on the short line, which justified a higher rate. It is also true that the Chicago rate was fixed at a higher rate per mile than the rate from Boston, though at a lower rate per mile than New York, its chief competitor, which had the same rate as Boston; but the western rates were fixed by the western lines, and if they favored the east it was not by reason of any demand or requirement of the eastern lines.

The Commission's former conclusions were not based upon mere supposition or conjecture, and even attaching to the action of the Nashville conference the import invoked by defendants, which, as I have suggested, is extremely doubtful, the mere expression of contemplated rightful doing and the filing of one schedule of rates certainly can not destroy the fact that rates were thereafter made substantially in accord with the intention expressed previous to the resolution referred to in the report. The Commission expressly found in its report of 1894 that—

The rates from Chicago to Chattanooga on the lettered classes are from 70 to 89 per cent of the New York rates, while on the numbered classes 1, 2, and 3, they are respectively 102, 101, and 95 per cent.

So far as the records of the Commission show, the class rates from the east to Atlanta and Chattanooga have never been changed except by the reduction of February 1, 1905. The Commission has compilations, however, of rates from Chicago to these points, an examination of which will show still greater preferences to the east on the numbered classes, especially during the decade 1880 to 1890. The present relation is substantially as it was in 1894.

I have suggested that complainants are entitled to greater relief than that proposed in the report. There is no doubt of the flourishing condition of the Cincinnati, New Orleans & Texas Pacific and in my mind none that it can operate with a reasonable profit under further reduced rates or that by such rates a hardship will be worked upon the carriers in the other and longer route between Cincinnati and Chattanooga. The Cincinnati, New Orleans & Texas Pacific is a leasing company, capitalized at \$5,500,000, consisting of \$2,500,000 preferred and \$3,000,000 common stock. The present rental of the Cincinnati Southern is slightly in excess of \$1,000,000 per annum. The history of this property is set out at some length in the report. Looking to a comparison of financial conditions it appears that for the years 1904, 1905, 1906, and 1907, gross earnings per mile from operations of the Cincinnati, New Orleans & Texas

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Pacific and Southern Railways and Groups 1, 2, and 3 of the Commission's system of grouping for statistical purposes, were as follows:

	1904.	1905.	1906.	1907.
Cincinnati, New Orleans & Texas Pacific.....	20,193	21,730	24,965	25,831
Southern.....	6,295	6,687	7,373	7,806
Group 1.....	13,984	14,511	15,528	16,314
Group 2.....	20,187	20,752	22,517	24,538
Group 3.....	11,863	12,483	13,789	14,922

Groups 1, 2, and 3 include all of New England, New York, Pennsylvania, New Jersey, Delaware, Maryland, and a portion of West Virginia, also Ohio, Indiana, and the southern peninsula of Michigan, and are by far the greatest revenue producers. As to the other seven groups the Cincinnati, New Orleans and Texas Pacific produces in every case gross revenues per mile three to four times greater. It will be observed that the Southern Railway produces not one-third the gross revenue per mile of the Cincinnati Southern. The average gross earnings per mile of the railroads of the whole United States for the year 1906 was \$10,460. The density of traffic on the Cincinnati, New Orleans & Texas Pacific has gradually increased from two in 1894 to nearly three times in 1906 the average density of all the roads in the United States, and from 1904, when the density per mile of line about equaled the average in Group 2, which includes Delaware, New Jersey, Maryland, the greater part of Pennsylvania and New York, and a small portion of West Virginia, the increase on the Cincinnati, New Orleans & Texas Pacific has been gradual until in 1906 this road's density was materially greater than that of Group 2. During these years this line has consistently enjoyed about five times the density per mile of the Southern Railway, by which it is controlled. The increase in density of traffic on the Cincinnati Southern was 169 per cent greater in 1906 than in 1904, as compared with 115 per cent average increase of all roads in the United States during that period, or 54 per cent in favor of the Cincinnati, New Orleans & Texas Pacific in the matter of increase.

The following table shows number of tons of freight carried per mile of line by the Cincinnati, New Orleans & Texas Pacific as compared with the Southern Railway, Groups 2 and 3, and the average in the United States:

	1904.	1905.	1906.
Cincinnati, New Orleans & Texas Pacific.....	2,088,497	2,163,643	2,636,587
Southern.....	449,203	467,477	537,081
Group 2.....	2,059,186	2,200,372	2,448,924
Group 3.....	1,379,788	1,457,855	1,713,615
Average, United States.....	829,476	861,396	982,401

The ratio of expenses to operating income of the Cincinnati, New Orleans & Texas Pacific for 1904, 1905, and 1906 is shown in the following table, as well as a comparison with the Southern Railway and Groups 3 and 5, which groups cover the territory involved in these complaints:

	1904.	1905.	1906.
Cincinnati, New Orleans & Texas Pacific.....	73.41	73.65	72.98
Southern.....	70.30	69.99	71.35
Group 3.....	74.52	73.08	70.57
Group 5.....	70.66	71.34	73.04

For the years 1906-7 the net earnings of the Cincinnati, New Orleans & Texas Pacific were \$6,746 and \$5,769, respectively, per mile of line and of the Southern Railway \$2,084 in the former year and \$1,801 in the latter.

The Louisville & Nashville during the year ended June 30, 1907, averaged gross earnings per mile of \$11,207.67, while the main line from Louisville to Nashville earned \$30,562.28, the Nashville-Decatur division \$25,227.72, and the Cincinnati to Louisville division \$24,618.15. The average of the whole system was lowered by numerous unprofitable branch lines, one of which earned only \$718.48. The suggestion is made that the influence of these branch lines should be considered in its effect upon the whole system. To a certain extent this is true, but a complainant city is not to be deprived of the benefits of its location and natural advantage simply because a carrier has seen fit to load itself down with such losing properties, many of which in the present instance are far removed from the seat of complaint.

The gross earnings of the Nashville, Chattanooga & St. Louis in that year averaged \$9,882 per mile and the earnings of its main line from Hickman, Ky., to Chattanooga were \$20,295 per mile.

Numerous other statistics both from this record and from the Commission's files might be produced but I shall merely point out by way of comparison that the first class rate from New York to Chicago, a distance of about 900 miles, is 75 cents, or 1 cent less than the Cincinnati-to-Chattanooga rate for 336 miles, and the local first class rate from Chicago to Cincinnati, a distance of 298 miles, is 40 cents. Objection possibly will be made to this comparison because the carriers do not operate in the same general territory. The only object, however, in so confining a comparison is to consider the respective rates in the light of substantially similar circumstances and conditions of carriage. Reference to tables of earnings, density of traffic, etc., herein will show that these rates are made under transportation conditions less favorable in these respects than the rate from Cincinnati.

nati to Chattanooga. Only Group 2, embracing the eastern half of the New York-Chicago haul approximates the defendant's high standard of general transportation conditions, and Group 3 is far below that standard. Under these circumstances this comparison with the highly competitive Official Classification territory should go far toward convincing that the rates in issue are greatly in excess of a reasonable charge.

It is stated in the report that—

If it is our duty to take this railroad by itself and to determine the reasonableness of these rates by reference to cost of construction, cost of maintenance, and profit upon the investment, we think the complainants have established their case and that these rates ought fairly to be reduced by as great an amount as was formerly found reasonable by this Commission.

Plainly then some very substantial reasons should be advanced for denying the relief asked for, bearing in mind, of course, the general conditions in this territory and having due regard for the interests of other routes. This suggestion in my opinion is not met by apprehension of injustice to the Louisville & Nashville and Nashville, Chattanooga & St. Louis, whose financial condition is not shown to require less remedial action, or by the reasoning by which it is sought to show that the middle west magnifies its troubles or by which the eastern carriers are absolved from all responsibility for the existing conditions.

Much attention is devoted to water competition from the east. I do not say that the contention can be disregarded, but I am convinced that this plea, while practically always made in southeastern cases and, perhaps, as a general rule rightfully so, can be and is much abused in the extent to which invoked. It is suggested that because of general disregard of distance by water lines shorter rail routes are restricted in the amount of their charges. It is pointed out that for years the ocean route via Cape Horn from New York to San Francisco fixed the transcontinental rate between those points, although four times the distance. I do not dispute this, but I do earnestly suggest that free competition and the use of water and rail lines from the middle west to the southeast would doubtless have resulted in lower rates from the former section. If the water lines are to wipe out distance from the east, why should not the water and rail lines do this in the present instance from the west to the extent that genuine free competition, unhampered by unlawful traffic agreements, would do it? Comparative distances, such as cited in the report, based on the water lines' prorating mileages, should be accepted with some degree of caution when an undue disregard of mileage results, especially when a discriminatory arrangement of water and rail lines from the farther distant centers is proved or even reasonably



to be suspected. It should be stated also that Chattanooga is situated on the geographical line abolishing the differential between all-rail and rail-and-water rates from the east and should not be controlled by this competition to the same extent that points nearer the seaboard are.

The report also asserts that competitive conditions from the east have made the first class rate from that section lower than from Chicago and that the same forces reduce the lettered classes, which form the great volume of western traffic, from the west. Statistics are produced to show that during March and September, 1907, 63.07 per cent of the entire tonnage of the numbered classes into Chattanooga moved from north of the Ohio River and from Ohio River crossings via western lines, and that 65.36 per cent of the total volume of that traffic into southeastern territory was transported by those carriers—in other words, about twice the eastern tonnage. If competition is free and has operated in the manner suggested above from the east and on the lettered classes from the west, why has not its influence been felt in this increased volume of traffic which ordinarily would afford a most fruitful field for its exercise?

The present rate from Cincinnati and Louisville to Chattanooga has been in effect for twenty-eight years, notwithstanding the reduction from the east, but the suggestion is made that eastern lines are in no way responsible. I can not accept this for reasons which presently appear. While Chattanooga was not included in the general reduction in the class rates from the Ohio River to the southeast early in 1905, which included Atlanta, this rate was included with Atlanta in the general reduction from the east at about the time of the western readjustment. The report charges this eastern reduction to Chattanooga to the Norfolk & Western, and inferentially excuses the defendants from any responsibility in this respect. This position is not justified, as the Norfolk & Western rates from either section to Chattanooga can be made only with the consent of connections, in the present instance through Bristol with the Southern Railway, one of the defendants here. If the Southern Railway joins with the Norfolk & Western, surely it can not be said that the Norfolk & Western makes the reduction or is the controlling force any more than the Southern. It is needless to remark that I wholly disagree with the explanation of this rate from the east. Moreover, this eastern rate to Chattanooga was not made subsequent to the Atlanta rate, but our tariffs show both the Chattanooga and Atlanta rates as effective February 1, 1905, and if the proceedings of the New York convention of December, 1904, filed as an exhibit, are to be accepted the Southern Railway itself offered the motion that Chattanooga rates from the east should not exceed those to Atlanta. It further

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appears that both the Southern Railway and the Cincinnati, New Orleans & Texas Pacific Railway were members of the committee that recommended no change in the rate from Louisville to Chattanooga in 1905.

In my view, the importance of the evidence before the Commission in the former cases, as to the manner in which and the purposes for which class rates from the west were made, is greatly minimized in the report, and notwithstanding the evidence withheld by the defendants and now for the first time presented, which, even if correctly interpreted in the report, is given undue weight in view of undisputed facts in the old record and of the whole situation, I am convinced that the rates involved were made and have been maintained higher than would have resulted but for the unlawful restraint of competition by the methods stated in the old report. Notwithstanding defendants' denial of the existence of an unlawful agreement prejudicial to the west, which plea seems to be accepted in the report, there can be no doubt that the admissions of the traffic representatives of the western and southern lines, herein quoted, even eliminating the other evidence from consideration, not only tend to show but do show, conclusively, to the contrary. That the Southern Railway has contributed to the discrimination against Chattanooga clearly appears. It may be, as the report states, "natural that the transportation lines from the east and the business houses in the east should exert themselves to maintain their hold upon this business," but this should be done by lawful means. As already stated, the present rates from Cincinnati to Chattanooga have been in effect for twenty-eight years, although Nashville, Atlanta, and other southeastern points have had relief, more or less justified in theory and in the degree extended in the different cases. Reductions to Chattanooga have been made from the east and in conjunction with one of the defendants in this proceeding. Looking to the history of the rates from these sections there is no doubt that as to Chattanooga from the west something is radically wrong, and in disposing of the complaint adequate relief should be given. I do not believe this would result in a wholesale disturbance of just rates to points throughout the south. So far as it would aid in the correction of unjust rates to other places the result is not to be deplored. Judged by any one of the considerations recognized either by the Commission or the courts in determining the reasonableness of transportation charges, the rates complained of exceed the limit of reasonableness to a greater extent than is declared in the report and should be dealt with accordingly.

I am authorized by Commissioner Lane to state that he concurs in these views.

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No. 2814.  
SIMON LESSER  
v.  
GEORGIA RAILROAD ET AL.

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*Submitted February 23, 1910. Decided May 9, 1910.*

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In view of the small volume of traffic in burnt cotton and the difficulty, without opening the bale, of determining the extent of the injury, and the possibility that a special rate might be taken advantage of and lead to abuses; *Held*, That the public interest does not require a distinction in rates to be made between cotton and burnt cotton. The complaint is therefore dismissed.

*R. J. Southall* for complainant.

*R. Walton Moore* for Georgia Railroad.

*Ed. Baxter* for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

**HARLAN, Commissioner:**

On November 21, 1907, the complainant shipped in carloads from Augusta, in the state of Georgia, to Lockland, in the state of Ohio, 132 bales of what was described in the bill of lading as "cotton refuse and mixed jute tailings." An inspection of the shipment made by an agent of the southern weighing and inspection bureau in connection with a sampler employed by the complainant, disclosed the fact that 101 bales consisted of cotton that had been subjected, to a greater or less extent, to the action of fire, the remaining 31 bales being "mixed jute and cotton refuse or tailings" as billed. On the hearing it was readily conceded that 83 bales were burnt cotton as claimed by the defendant, but it was contended by the complainant that the other 49 bales were made up of the jute mixture. The only evidence offered in support of this contention, however, was a bill of sale, which described 49 bales as sweepings and seemed to show that they had been sold at 1½ cents per pound. On the whole record we feel justified in concluding that the 18 bales in dispute were burnt cotton, and we shall so consider them in disposing of the complaint.

The Western and Official Classifications make no reference to burnt cotton but do provide for cotton, n. o. s. Under the Southern Classi-

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fication the same rating is given both to burnt cotton and to uninjured cotton; nor is there any distinction between cotton and burnt cotton in the tariffs of the defendants, the published rate on both commodities between the points in question being 53 cents per 100 pounds. The legal rate on that part of the complainant's shipment that consisted of burnt cotton was therefore 53 cents, and this was the rate at which the charges were actually assessed and collected. The petition in no way mentions burnt cotton, but simply avers that the 53-cent rate was an unreasonable rate on mixed jute and cotton refuse or tailings, and that for carload shipments the rate should not exceed 20 cents per 100 pounds, which rate was in fact already applicable on the latter commodity over the defendant lines. We gather, however, from the record that the real contention of the petitioner is that this 20-cent rate on mixed jute and cotton refuse or tailings should be extended to burnt cotton on the theory that burnt cotton in reality is cotton refuse. The case was heard and argued upon that issue and upon that basis reparation is demanded in the sum of \$179.74. We are also asked to establish such rules and regulations, in lieu of those now existing, as will operate to prevent the continuance of this alleged discrimination and disadvantage; and this we understand to mean that we shall order the defendants hereafter to apply on burnt cotton the present rate on mixed jute and cotton refuse.

As the tariffs of the defendants specifically provide that burnt cotton shall take the regular cotton rates, we need not discuss the complainant's contention that burnt cotton is cotton refuse. It may be well to add that at the time these shipments were made the carload rate of 20 cents on mixed jute and cotton refuse or tailings was technically inapplicable on those commodities as was also the less-than-carload rate of 32 cents. But the defects in the tariffs of the defendants in this respect have since been corrected so far as the carload rate is concerned, and therefore may be disregarded in the disposition of the complaint. It is assumed that the defendants will promptly correct their tariffs with respect to the less-than-carload rate also.

At the hearing it was strongly urged by the complainant that inasmuch as the value of burnt cotton was considerably less than that of an average grade of uninjured cotton, it should not take the same rates as the uninjured commodity. While the technical force of this contention was admitted by witnesses for the defendants, it was stated that as a practical matter it would be difficult to establish a special rate on burnt cotton without opening a channel for misbilling and discrimination; and for this reason the regular cotton rates for many years have been applied to cotton damaged by fire. On this subject testimony was adduced to show that it would be impossible for an inspector ordinarily to ascertain to what extent a

bale of cotton was damaged, and that this was a very material phase of the matter inasmuch as some so-called burnt cotton is fully as valuable as a low-grade cotton. It was further urged that the bales are frequently scorched only on the outside, the inner portion being wholly uninjured. In such cases, unless the bales are opened, the extent of the damage and the consequent value of the commodity would be unascertainable. In reply to these contentions the complainant suggested that it would be entirely practicable to establish a rate on burnt cotton pickings, and that under a rate so limited the shipper could be held to a strict accountability. The defendants, however, were strongly adverse to establishing a different and lower rate on cotton injured by fire, evidently believing that it would subject the traffic to unlawful discriminations and practices. The movement of burnt cotton ordinarily is not very large. Apparently the complainant is the principal dealer at Augusta, and his shipments last year amounted to but 300 bales out of the 400,000 bales of cotton that passed through that point.

The question presented on these facts is whether burnt cotton is entitled to a special rate. It is suggested as a solution of the problem that carriers might be required to publish a low rate on burnt cotton released to a valuation of five cents a pound. It is doubtful, however, whether such an order is within the power of the Commission to enter, and if so whether it would prove altogether satisfactory. While the record shows that this particular cotton was sold at a price that indicates that it had been so injured as to leave it of a value approximating the value of ordinary cotton waste, nevertheless there is no fixed standard by which the value of burnt cotton may be satisfactorily determined by any system of inspection that carriers could reasonably be expected to establish. A high grade of cotton slightly burned on the outside of the bale may still be as valuable as a low grade that has not been touched by fire. Upon all the information now before us, and in view of the negligible volume of the traffic in burnt cotton, we are unable to see that the public interest requires a distinction to be made between cotton and burnt cotton; and we reach this conclusion the more readily in view of the possibility that such a difference in rates might be taken advantage of and thus lead to abuses. Moreover, the owners of cotton injured by fire are ordinarily insured, and if so, suffer little loss; and those who make a business of buying burnt cotton undoubtedly give a price that is adjusted to the regular freight rate on cotton.

Under all the facts shown of record we think the complaint must be dismissed, and it will be so ordered.

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No. 2908  
FREDERICH & KEMPE COMPANY ET AL.  
v.  
NEW YORK, NEW HAVEN & HARTFORD RAILROAD  
COMPANY ET AL.

*Submitted April 19, 1910. Decided May 3, 1910.*

On complaint of merchants and shippers of Red Wing, Minn., that rates charged by defendants on shipments from Trunk Line points are unreasonable and discriminatory to the extent of certain arbitraries added to the rates to St. Paul, Minn., from the same points; *Held*, That inasmuch as Red Wing is intermediate on the main line of the Chicago, Milwaukee & St. Paul Railway from Chicago, Ill., and Winona, Minn., to St. Paul, and as competitive cities north, east, and south take St. Paul rates, it is unduly discriminated against to the extent of the arbitraries. *Ordered*, That the Chicago, Milwaukee & St. Paul Railway Company be required to maintain to Red Wing no higher rates from points in Trunk Line territory than are contemporaneously maintained to St. Paul from the same points.

*G. M. Stephen, A. M. Lasley and F. A. Lasley* for complainants.  
*S. A. Lynde* for Chicago & North Western Railway Company.

*William Ellis* for Chicago, Milwaukee & St. Paul Railway Company; Pennsylvania Railroad Company; New York, New Haven & Hartford Railroad Company; Erie Railroad Company; and Chicago & Erie Railroad Company.

*O. E. Butterfield* for New York Central & Hudson River Railroad Company; Lake Shore & Michigan Southern Railway Company; Michigan Central Railroad Company; and West Shore Railroad Company.

*Winston, Payne, Strawn & Shaw and Blackburn Esterline* for Chicago Great Western Railroad Company.

*Robert E. Burnap* for Grand Trunk Railway System.

REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

This is a complaint by a number of manufacturers and merchants of Red Wing, Minn., that defendants' charges for transporting freight from Trunk Line points to Red Wing, via all-rail and lake-and-rail

routes, are unreasonable and discriminatory to the extent of certain arbitraries added to the rates from the same points to St. Paul and other competing points in Minnesota and Wisconsin. Reparation is asked on a large number of shipments.

Red Wing is a city of about 20,000 population, located on the west bank of the Mississippi River, about 40 miles south of St. Paul, 60 miles west of Eau Claire and Chippewa Falls, Wis., 60 miles north of Winona, Minn., and 90 miles north of La Crosse, Wis. It is on the main line of the Chicago, Milwaukee & St. Paul, extending from Chicago to St. Paul and Minneapolis. It is also served by branch lines of the Chicago Great Western. Red Wing is about 190 miles from Duluth via St. Paul. The distance from Milwaukee to La Crosse is about 190 miles. The distance from Chicago to Winona is 307 miles and to Red Wing 367 miles. Chippewa Falls is 403 miles from Chicago via the Chicago, Milwaukee & St. Paul, and Eau Claire 396 miles. Red Wing is 254 miles from Milwaukee, and La Crosse is 239 miles from Green Bay via the Green Bay & Western. Chippewa Falls and Eau Claire are served by branch lines of the Chicago, Milwaukee & St. Paul.

On traffic to and from Central Freight Association territory, St. Paul rates are applied to Red Wing as intermediate. On all shipments outbound, Red Wing is on the St. Paul basis. It is only on shipments from Trunk Line points that Red Wing is excepted from the general adjustment of rates applicable to competitive points north, east, and south. On shipments from all eastern points, including those in Trunk Line territory, La Crosse, Winona, Eau Claire, Stillwater, Minn., St. Paul and Minneapolis take the same rates via all routes.

The effective rates in cents per 100 pounds from New York, Philadelphia, and Baltimore to St. Paul and Red Wing, via lake and rail and all rail, are shown by the following table:

LAKE-AND-RAIL RATES.

From—	To St. Paul.						To Red Wing.					
	Class.						Class.					
	1	2	3	4	5	6	1	2	3	4	5	6
New York.....	83	72	64	38	32	26	96	84	64	45	36	30
Philadelphia.....	77	66	52	36	30	24	92	78	62	43	34	28
Baltimore.....	75	64	51	35	29	23	90	76	61	42	33	27

ALL-RAIL RATES.

New York.....	115	99	76	53	46	38	130	111	86	60	50	43
Philadelphia.....	109	93	74	51	44	36	124	105	84	58	48	40
Baltimore.....	107	91	73	50	43	35	122	103	83	57	47	39

It thus appears that rates to Red Wing from the territory in question are made by adding to St. Paul rates the following arbitraries:

Class .....	1	2	3	4	5	6
Arbitraries....	15	12	10	7	4	4

For many years prior to May 20, 1908, Red Wing was on the St. Paul basis with respect of shipments from Trunk Line points via lake-and-rail routes. On the date named the above arbitraries were applied to Red Wing, Eau Claire, Chippewa Falls, La Crosse, and Winona. In August, 1908, Winona, La Crosse, Eau Claire, and Chippewa Falls were restored to the St. Paul basis. In October of the same year Red Wing was given the same rates, but in June, 1909, the arbitraries were reestablished as applicable to Red Wing only and have since been maintained on traffic to that point.

It is contended by the Chicago, Milwaukee & St. Paul, which assumed the burden of the defense, that on shipments from Trunk Line points rates to St. Paul are forced down by lake-and-rail competition through the Duluth gateway, and that higher rates to Red Wing are justified because of this competition at St. Paul, although Red Wing is intermediate the way the traffic moves. It is asserted that Winona and La Crosse take St. Paul rates because of lake-and-rail competition via the Green Bay & Western from Green Bay, Wis., and that application of St. Paul rates to Chippewa Falls and Eau Claire is made by lines reaching those points from Lake Superior ports to the north.

It is further stated by defendants that the St. Paul basis, lake and rail, was discontinued at Red Wing for the reason that, if maintained there, other cities to the west served by the Chicago, Milwaukee & St. Paul and other lines leading from Chicago would demand the same basis, and thus the entire rate structure throughout a considerable extent of territory would be endangered.

Freight moving all rail from Central Freight Association as well as from Trunk Line points passes through Chicago or Milwaukee, La Crosse, and Winona on its way to Red Wing. Transportation conditions beyond Chicago are precisely the same whether the traffic originates in Trunk Line or Central Freight Association territory. Lake-and-rail competition is only effective during the open season, which comprises about seven months of the year; and, so far as the evidence shows, no freight is shipped from Trunk Line points to Red Wing through the Duluth gateway.

No point of any importance south of St. Paul takes as high rates as Red Wing. To Hastings, Minn., 20 miles south of St. Paul, there was applied for a number of years the lowest combination based on Chicago, Milwaukee, Duluth, St. Paul, or Winona. In 1907 the combination via the route the shipment moved was applied. June 1, 1909, the arbitraries applicable to Red Wing were established at Hastings.



We are not impressed with the contention of defendants that if Red Wing is placed upon the St. Paul basis on shipments from Trunk Line points it will, as a matter of course, be necessary to apply the same basis to points west of Red Wing. On most traffic Red Wing is treated by defendants as a Mississippi River point. No point west of Red Wing, as we see the situation, is similarly surrounded by competing cities which take a lower basis of rates. The defendants justify the higher rates to Red Wing on the ground of alleged dissimilar circumstances and conditions prevailing at St. Paul. They also insist that circumstances and conditions are different at Eau Claire, Chipewewa Falls, Winona, and La Crosse. With respect to the two first-named points the circumstance of location favors Red Wing, while the fact that La Crosse and Winona take lower rates is a substantial disadvantage from a competitive standpoint.

Red Wing is not only intermediate on the main line of the Chicago, Milwaukee & St. Paul, from Chicago, Milwaukee, La Crosse, and Winona, to St. Paul, but its relative distance from Duluth and Milwaukee and its proximity to competing points in the same region make, in our opinion, the application of the arbitraries in question unduly prejudicial and therefore unlawful.

The Chicago Great Western reaches Red Wing by branch lines, and as that point is not intermediate on its main line, Chicago to St. Paul, it perhaps ought not to be required to apply St. Paul rates thereto on Trunk Line traffic. Red Wing is intermediate only on the Chicago, Milwaukee & St. Paul, and other carriers should apparently be allowed to determine for themselves whether they will meet the Red Wing rates of that company. What a carrier may do to meet competition of the kind in question is one thing, and what it ought to be compelled to do is another thing.

The arbitraries which are added to the St. Paul rate from Trunk Line points on shipments to Red Wing inure to the lines leading from Chicago. They appear in the Western Trunk Line tariff and in the rail-and-lake tariff of the Baltimore & Ohio and other lines to which numerous carriers are parties. In divisions of through rates lines to Chicago receive the same earnings on Red Wing traffic as on similar traffic destined to St. Paul. Under all the circumstances shown we are of the opinion and so find that the rates in question are unreasonable and discriminatory, and that the Chicago, Milwaukee & St. Paul should be required for the future to cease and desist from adding published arbitraries to the St. Paul rates to make the rates to Red Wing on traffic from Trunk Line points.

In view of all the circumstances relating to the making and maintenance of the rates to Red Wing we are of opinion that reparation should not be awarded.

An order will be entered accordingly.

No. 1776.

DULUTH & IRON RANGE RAILROAD COMPANY

v.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY  
COMPANY ET AL.

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*Submitted November 20, 1909. Decided May 10, 1910.*

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1. Rule 214 of Conference Rulings, Bulletin No. 4, is of continuing application through to destination upon all carriers participating in a movement and does not leave connecting lines in a state of irresponsibility with respect to routing when they accept shipments from an initial carrier without instructions.
2. A connecting line receiving a shipment without instructions may demand instructions from the initial carrier, but if, instead of pursuing that course, it assumes the responsibility of routing the shipment it must accept the resulting liability for any damage in the way of increased charges that necessarily and directly flows from its mistake in selecting the wrong route. It is not excused by the fact that the shipper had given correct routing instructions which the initial carrier had neglected to note on the transfer billing.
3. The view expressed that connecting lines from the nature of their larger traffic and wider opportunities for knowing what are the reasonably direct routes ought in many cases to relieve small initial carriers of the responsibility for correct routing; and, with respect to shipments to distant and unusual points, that the initial carrier, as well as its immediate connections, ought not to be held to any greater duty than that of indicating the usual or proper gateway to destination; in such cases responsibility for specific routing would seem more logically to attach to the carriers beyond the gateway.

*H. Johnson* for complainant.

*H. M. Pearce* for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

*Samuel A. Lynde* for Chicago & North Western Railway Company.

#### REPORT OF THE COMMISSION.

*HARLAN, Commissioner:*

On March 18, 1907, the Duluth & Iron Range Railroad Company received at Ely, a station on its line in the state of Minnesota, a car-load of lumber consigned to the American Car & Foundry Company  
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at St. Charles, in the state of Missouri. It issued to the consignor a through bill of lading upon which it had noted, in accordance with his instructions, that the shipment was to move through Duluth and over the Chicago, St. Paul, Minneapolis & Omaha, the Minneapolis & St. Louis, and the Iowa Central lines. By that route the first of the last-named companies would have carried the car from Duluth to Minnesota Transfer, from which point the other two lines, in connection with the Wabash as the delivering carrier, would have hauled it to destination under a combination through rate of 21 cents per 100 pounds. The initial carrier, the complainant herein, moved the car to Duluth, the only junction it had for traffic to the destination in question. It there turned the car over to the Chicago, St. Paul, Minneapolis & Omaha, but neglected to note the consignor's routing instructions on the transfer billing. The Omaha line, instead of delivering the car at Minnesota Transfer to the Minneapolis & St. Louis, which formed a part of the direct route to destination, hauled it through that point to Sioux City, and there delivered it to the Chicago & North Western, by which line it was taken to Council Bluffs on the Missouri River and there turned over to the Wabash, which hauled it back 387 miles to destination on the Mississippi River. At that point freight charges were collected on the basis of the sum of the local rates applying over the route taken, making a combination rate of 34 cents per 100 pounds.

In due course a claim was presented to the initial line for the excess transportation charges, amounting to 13 cents per 100 pounds, resulting from the failure of the carriers participating in the movement to follow the routing instructions given by the consignor. Acting, as it states, under the authority of Rule 70 of Tariff Circular 15-A, the initial carrier reimbursed the shipper on the basis of the 21-cent rate in effect over the proper route. It then filed this complaint against the Chicago, St. Paul, Minneapolis & Omaha for the purpose of requiring that company to assume responsibility for the misrouting and to repay to the complainant the amount which the latter company, as the initial carrier, had paid to the shipper in settlement of his claim for damages. The complaint involved an interpretation of Rule 70 as then published, and the matter was submitted to the Commission on that ground. That rule, however, did not permit a carrier to reimburse the shipper in a misrouting case and at the same time to reserve for subsequent consideration the question whether it or its connection was at fault. It expressly provided that if additional transportation charges result from a misrouting a refund might be made if the "responsibility for the agent's error is admitted by the carrier;" and the rule carefully stated that authority to act under its terms "is limited strictly to the cases specified and to

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the circumstances recited." But on March 9, 1909, and while this complaint was under advisement, Rule 70 was amended. It now appears as Rule 214 of Conference Rulings, Bulletin No. 4, and will be so referred to hereinafter. In its present form it provides that if a carrier adjusts a claim for misrouting and later learns that the responsibility rests with a connection, the latter may voluntarily repay the full amount to the former or, in case of a dispute between them as to the responsibility for the error, the matter may be referred to the Commission for its determination. The controversy between these two carriers is therefore now properly before us, and the question for decision is, which was liable and which must bear the burden of the additional freight charges resulting from the misrouting?

In response to an inquiry by the Commission, the freight traffic manager of the defendant frankly admits that the geographical relation of Duluth and St. Charles is such as not to warrant a routing through Council Bluffs, and that his agent at Duluth would have displayed only ordinary intelligence if he had forwarded the shipment through Minnesota Transfer and thence by the Minneapolis & St. Louis to destination. Later he suggests that, from a practical point of view, the additional transportation charges on this shipment were the result—

not of one error, but of two; namely, the omission on the part of the agent of the Duluth & Iron Range Railroad in not furnishing the routing prescribed by the shipper, and, second, on the part of our agent at Duluth in not exercising good judgment in the route selected for the shipment.

The error of the defendant in billing the shipment out of Duluth is therefore admitted. Is it excused from bearing the burden of its error because of the failure of the initial carrier to note the shipper's routing instructions on the transfer billing? In this connection it is well to remember that the complainant has but one junction for traffic to St. Charles, and that is its connection with the rails of the principal defendant at Duluth, at which point it actually delivered the shipment to the defendant. The essential question before us, therefore, is whether the mere failure of the initial carrier to pass the shipper's routing instructions along to its connection at Duluth relieves the connecting line, as a matter of law, from the duty of forwarding the shipment over the reasonable and direct route to destination, and relieves it of liability when, through the oversight of its agent at Duluth, the shipment was carried to the extreme west boundary of the state of Missouri only to be brought back again to its destination on the extreme eastern boundary of that state—a route which, though entirely inadvertent in this case, was by no means a direct or reasonable route to destination.

Rule 214 is not confined in its operation to the initial carrier, but relates to all the carriers participating in a movement. It

is of continuing application from the moment a shipment is received by the initial carrier until it is turned over to the consignee by the delivering carrier. The initial carrier may hand the shipment to a connection at a wrong junction, and for all excess charges directly and necessarily resulting from that error it is responsible. But this original error of the initial carrier does not relieve the connecting lines from the operation of the rule. If it be the law that the initial carrier, upon receiving a shipment for transportation, impliedly contracts with the shipper to forward it over the cheapest reasonably available route, and therefore is under the obligation to route the shipment, and we incline to this view of its duty, we can not think that the law leaves the connecting lines in a state of complete irresponsibility in the event of the failure of the initial line to do its duty in that regard. If the obligation is on the initial carrier to route a movement the connecting line has a right to decline to receive the shipment when unaccompanied by routing instructions; and if it receives the shipment and finds no routing instructions on the billing the connecting line may hold it and demand instructions. But if it neither receives nor demands instructions from the initial carrier, and undertakes without instructions to forward the shipment to destination, can it be possible that it may do so absolutely free of responsibility to the shipper for the consequences? We think not. It may protect itself by demanding instructions; but if instead of pursuing that course it assumes the responsibility of routing the shipment it must, under Rule 214, accept the liability that accompanies that assumption of responsibility, and must make good to the shipper any loss to him that directly and necessarily flows from its mistake in selecting a wrong route. And so the rule continues to operate on all the participating carriers through to destination.

Routing instructions are given by shippers for different reasons. Their experience may lead them to think that one route is safer or more expeditious than another; they may prefer to deal with one carrier rather than another; or they may have the privilege, under tariffs applicable to one route, of reconsignment, diversion, elevation, inspection, milling in transit, or other benefits that are not available under the tariffs applicable to another route. This, however, is not such a case so far as the record gives us any information. The shipper knowing what was the direct route to St. Charles noted it on the bill of lading. The initial carrier delivered the shipment to the defendant at the right junction, but neglected to pass the instructions along on the transfer billing. But the facts of the case show, and the defendant concedes, that it knew that the line of the Minneapolis & St. Louis from Minnesota Transfer was the direct and customary route to the destination in question. It was therefore its

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duty to the shipper, as well as to the initial carrier, to deliver the shipment at that point to that line. It had accepted the traffic at Duluth without instructions and as an unrouted shipment. Although it could easily have asked the initial carrier for instructions, and had the right to do so, it did not pursue that course but itself undertook to route the shipment. How, then, can it avoid the consequences of its own error either under Rule 214 or from any other point of view? Having accepted the shipment without routing instructions and having undertaken the responsibility of forwarding it to destination by a reasonably direct route, upon what ground may it cast the burden of its error back upon the initial carrier? In our judgment in accepting the shipment without instructions and in undertaking to forward it to destination, the defendant must be held under Rule 214 to have accepted the full responsibility to the shipper for the results. And it is not excused from the consequences of its mistake by the fact, subsequently discovered, that the shipper had given correct routing instructions of which the initial carrier had failed to advise the defendant.

Under the circumstances of the case we are therefore of the opinion that the additional transportation charges imposed upon this shipment by the carriage of it to Council Bluffs and back to destination is a burden to be borne by the defendant without recourse upon the complainant or upon any other carrier that participated in the movement.

In order to avoid a misunderstanding of anything here said it may be well to add that the larger lines and systems, when they are intermediate or connecting carriers, not infrequently relieve small initial carriers of the responsibility for correct routing, and, from the nature of their larger traffic and wider opportunities for knowing what are the reasonably direct routes, they ought in many cases to be willing to do this. Moreover, with respect to shipments to distant and unusual points it is not reasonable to expect that the initial line, and often even its immediate connections, will be able to give specific routing through to destination; in such cases they ought not to be held to any greater duty than that of indicating the proper or usual gateway to destination. In instances of that kind the responsibility for specific routing would seem more logically to attach to the carriers beyond the gateway.

An order will be entered in accordance with these views.

18 L. C. Rep.

No. 1723.

BAYOU CITY RICE MILLS ET AL.

v.

TEXAS &amp; NEW ORLEANS RAILROAD COMPANY ET AL.

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Submitted June 18, 1909. Decided May 9, 1910.

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On complaint that millers of rice at Houston, Tex., are subjected to undue prejudice and disadvantage because storage-in-transit and reconsignment privileges are provided at Houston on rice destined to New Orleans, La., while similar privileges are denied at Louisiana points on rice destined to Houston; and of the maintenance of a rate of 19 cents from Houston to New Orleans while according a rate of 15 cents from Clinton, Tex., a point about 8 miles south of Houston, the traffic from Clinton passing through Houston to reach New Orleans; *Held*, (1) That we are not warranted in finding that there is any unjust discrimination because of the failure of rail lines reaching New Orleans to provide for transit privilege on shipments of rice from New Orleans to Texas, and (2) a *prima facie* case of dissimilarity of conditions between Houston and Clinton under the fourth section has been made. As the facts now appear no order which might disturb the whole system of rice rates in that section of the country will be entered. Complaint dismissed without prejudice.

*P. H. McNemer and Hutcheson, Campbell & Hutcheson* for complainants.

*Baker, Botts, Parker & Garwood; J. P. Blair, and F. C. Dillard* for defendants.

## REPORT OF THE COMMISSION.

*KNAPP, Chairman:*

Complainants are millers of rice at Houston, Tex. They clean and mill rough rice, manufacture and sell rice by-products, and deal in cleaned rice as wholesale merchants. The allegations of their complaint are quite indefinite and uncertain, but they apparently intended to present three distinct grounds for relief.

First. *That rates on rice in carloads from Houston to New Orleans, La., were higher than from New Orleans to Houston; that rates from Houston to New Orleans were relatively higher, mileage considered, than from certain Texas points east of Houston to New Orleans; and that*

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*rates from certain intermediate points to Houston were relatively higher, mileage considered, than from intermediate points to New Orleans.*

It is sufficient to say of this grievance that it was removed by the voluntary action of the carriers in October, 1908 (the complaint having been filed in September of that year), when the higher rates from and to Houston were reduced to the same basis as rates from and to New Orleans. Since this change the rates here in question have been relatively equal between all points and in both directions. It is not contended that the present rates are unreasonable, and they appear to be satisfactory to complainants.

Second. *That complainants and other millers of rice at Houston are subjected to undue prejudice and disadvantage because storage-in-transit and reconsignment privileges are provided at Houston on rice destined to New Orleans, while similar privileges are not accorded at Louisiana points on rice destined to Houston.*

It appears from defendants' tariffs that rice may be shipped into Houston, stored and treated there, and then forwarded at the balance of the through rate from point of origin to final destination plus a reconsignment charge of 2 cents per 100 pounds. No such privilege is provided on shipments from Louisiana points to Houston, and this difference against Houston constitutes the alleged discrimination.

Insurmountable objection to any relieving order based upon this ground of complaint is found in the fact that the initial carriers from Louisiana points, on whose lines reconsigning privileges are asked to be established, were not made parties to this proceeding and have had no opportunity to be heard. The lines of the two defendants named do not extend nearer New Orleans than 144 miles and do not reach the points where reconsigning privileges are desired by complainants. In addition to the absence of necessary parties, and perhaps for that reason, there is no showing in this record of the conditions under which rough rice is shipped into and out of the Louisiana points in question, or of the volume of this traffic. Indeed, the evidence fails to indicate that there has ever been any considerable movement of rice from Louisiana to Texas or that the establishment of reconsigning privileges at Louisiana points would stimulate increased shipments. Upon the evidence now submitted it is impossible to determine, and we are certainly not warranted in finding, that there is any such unjust discrimination in this respect as complainants assert, and obviously no order could be made because the initial carriers from Louisiana are not before us.

Third. *That the maintenance of a rate of 19 cents from Houston to New Orleans while according a rate of 15 cents from Clinton, Tex., a point about eight miles south of Houston, the traffic from Clinton passing*



*through Houston to reach New Orleans is unlawful and constitutes unjust discrimination against Houston.*

It appears that defendants provide a rate from Clinton of 15 cents on rice coming to that point from certain specified plantations, the transportation from which to Clinton is wholly by water. The water carriers of this traffic are not parties to the tariffs in question, do not join in through routes or rates, nor have they any common arrangement with the defendant roads. Near Clinton, on the International & Great Northern Railroad, is Long Reach, Tex., from which that company makes a rate of 15 cents to New Orleans, in connection with the Texas & Pacific, on rice from the same plantations which is also brought to Long Reach by independent water carriers.

It should be noted in this connection that the rates established on rice increase with distance from New Orleans until a maximum of 19 cents is reached at a distance of 350 miles, which is in the vicinity of Houston, and that rate then applies as a blanket rate for a distance of about 117 miles west of Houston, covering the territory of rice production.

The rice plantations above referred to are located along the shores of Trinity Bay, from 40 to 60 miles south of Clinton, and are not reached by any railroad. Rice could be carried from these plantations to New Orleans wholly by water, and the testimony shows that at one time, on account of the high rail rates then charged, a million and a half pounds of rice and its products were transported by barge from Port Arthur to that market. The roads subsequently reduced the rate from Clinton and the traffic now moves by rail.

Beyond the foregoing facts there is little in the record upon which to base a finding in regard to this third ground of complaint. While the petition calls attention to the lower rates from Clinton than from Houston the attitude of complainants towards this adjustment is quite uncertain, and the testimony given in their behalf fails to indicate the corrective order to which they deem themselves entitled. The defendants have apparently been induced to make the lower rate from Clinton in order to secure traffic which otherwise might move by water or by another railroad and also by a disposition to put the rice growers on the Trinity Bay plantations, which are not reached by any railroad, on a basis of relative equality with the rice growers along their lines, particularly those west of Houston, as respects the cost of moving their product to the New Orleans market.

Upon the present record we are constrained to hold that a *prima facie* case of dissimilarity under the fourth section has been made, and that as the facts now appear we ought not to make an order which might disturb the whole system of rice rates in that section of the country, particularly in view of the fact that complainants do not

question the reasonableness per se of the 19-cent rate from Houston, and in view of the further fact that they are at comparatively slight disadvantage under the present adjustment because they enjoy a rate of \$5 per car from Clinton to Houston on rice coming from the plantations in question.

We are of opinion, however, that the tariff which provides the 15-cent rate from Clinton is improper in form and substance and should be promptly corrected. The Commission has repeatedly held that a carrier may not lawfully make rates to a given point on its line, on traffic going beyond by wagon or other similar conveyance, which are lower than its established rates to that point as a final destination; and the principle involved seems clearly applicable to this case. *Cary v. Eureka Springs Ry. Co.*, 7 I. C. C. Rep., 286. *Wylie v. N. P. Ry. Co.*, 11 I. C. C. Rep., 145. If the defendants are justified in making lower rates on rice from Clinton than from Houston, as now appears to be the case, it is not because the rice is brought to the former place in barges or other water craft, but because such lower rates are necessary to meet competitive conditions at Clinton which do not exist at Houston. The lower rates from Clinton, therefore, should not be restricted to rice coming from particular plantations or by specified modes of conveyance, but should be open to all shippers who may desire the transportation of rice from that point. The act imposes this requirement upon the defendant carriers and no order is necessary to secure its observance.

The complaint will be dismissed without prejudice.

18 I. C. C. Rep.

No. 2887.  
WILLIAM K. NOBLE  
v.  
TOLEDO & WESTERN RAILROAD COMPANY ET AL.

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*Submitted January 7, 1910. Decided May 10, 1910.*

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Reparation awarded for misrouting.

*R. B. Coapstick* for complainant.

*Smith & Baker* for Toledo & Western Railroad Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

On May 25, 1907, complainant shipped from Pioneer, Ohio, to Coveseville, Va., one carload of coiled elm hoops weighing 27,700 pounds, upon which the sum of \$96.95, based upon a rate of 35 cents per 100 pounds, was collected. Complainant alleges that the charges should have been \$67.87, based upon a rate of 24½ cents per 100 pounds, and asks reparation in the sum of \$29.08.

This shipment was delivered without routing instructions to the Toledo & Western Railroad, an electric line between Toledo and Pioneer, which carried it to Fitch, Ohio (West Toledo), and turned it over to the Wabash Railroad without routing instructions. The Wabash carried the shipment to Peru, Ind.; the Chicago, Cincinnati & Louisville transported it to Cincinnati, Ohio; the Cincinnati, New Orleans & Texas Pacific carried it to Harriman Junction, Tenn., and the Southern Railway took it to destination.

Apparently the shipment was charged a combination of rates via the route traveled, but the cheapest reasonable available rate was 24½ cents, made up of a joint rate of 19½ cents from Pioneer to Charlottesville, Va., and an arbitrary of 5 cents beyond. The Toledo & Western depended upon the Wabash to route the shipment, but demanded its 4-cent proportional rate for its haul from Pioneer to Fitch, while under the joint rate it would have received a division of only 3 cents.

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The Wabash did not send the shipment over the route by which the joint rate of 19½ cents applied, and explains as the reason therefor that all the carriers parties to the joint rate had not agreed on arrangements as to divisions thereof.

This case is controlled by the decision in *Duluth & Iron Range R. R. Co. v. C., St. P., M. & O. Ry. Co.*, 18 I. C. C. Rep., 485, and under the rule there announced the responsibility for misrouting this shipment rests with the Wabash Railroad Company and complainant is entitled to reparation from that defendant in the sum of \$29.08, with interest from June 15, 1907. It should be understood, however, that the Toledo & Western is entitled to no more than its division of the joint rate to Charlottesville, to which it was a party. Such an order may be entered.

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No. 2644.

CENTRAL LUMBER COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY  
ET AL.

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*Submitted April 7, 1910. Decided May 25, 1910.*

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Upon complaint seeking reparation; *Held*, That to accord to complainant's shipments the benefit of a proportional rate from Aberdeen, S. Dak., to Scranton, N. Dak., established about a year after certain carload shipments of lumber had reached Aberdeen on local billing from points in Washington, and as much as five months after most of it had reached Scranton as local movements from Aberdeen, would be in violation of every principle involved in the administration of this law. Petition dismissed.

*E. Hudson* for complainant.

*William Ellis* for Chicago, Milwaukee & St. Paul Railway Company.

*R. M. Calkins* for Chicago, Milwaukee & Puget Sound Railway Company.

*W. W. Broughton* for Great Northern Railway Company.

*H. B. Paige* for Bellingham Bay & British Columbia Railway Company.

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## REPORT OF THE COMMISSION.

**HARLAN, Commissioner:**

From various points of origin in the state of Washington 10 carloads of lumber were shipped to the complainant at Aberdeen, in the state of South Dakota, during the period from June, 1907, to June, 1908. Although there was no indication on the billing that the lumber was intended subsequently to be reshipped from Aberdeen to points beyond, the complainant specifically states that it had been purchased for the purpose of stocking a lumber yard which it proposed to establish at Scranton, a station on the line of the Chicago, Milwaukee & Puget Sound Railway Company, in the state of North Dakota, as soon as that road, then in the process of construction, was opened up for traffic to Scranton. This line is an extension of the Chicago, Milwaukee & St. Paul Railway, with which it has a junction at Mobridge, in South Dakota. But at the time the lumber was received at Aberdeen, namely from July 1, 1907, to July, 1908, there was no physical connection at Aberdeen between the tracks of the Chicago, Milwaukee & St. Paul and those of the Great Northern. As fast as it arrived at Aberdeen the lumber was therefore unloaded from the cars on the Great Northern tracks and drayed across the town and deposited at a point adjacent to the tracks of the principal defendant. This was done by and at the expense of the complainant. When the Puget Sound line was opened to Scranton and cars had been furnished by the principal defendant, the lumber was reloaded and forwarded to that point as 11 carloads, 1 carload moving as late as July 24, 1908, and none going forward until several months after it had reached Aberdeen.

It will be observed that upon the arrival of the lumber at Aberdeen the Great Northern, as the delivering carrier, collected charges at the published rates applicable upon lumber from the several points of origin in the state of Washington to Aberdeen. On the shipments made some months subsequently from Aberdeen to Scranton, charges were assessed and collected at a combination rate of 29 cents per 100 pounds. The movement into Aberdeen and the movement some months later out of Aberdeen were separate acts of carriage so far as the carriers and their billing and other transportation records were concerned. The two movements had no relation to one another beyond the fact, as the complainant asserts, that the lumber was actually purchased for its yards at Scranton.

What the complainant desires in this proceeding is to have the benefit, in lieu of the local rate paid on the lumber from Aberdeen to Scranton, of the proportional rate that was subsequently made effective between those points on lumber reaching Aberdeen from the

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northwest. We see no grounds upon which we may with propriety authorize such an adjustment. Neither the fact that proportional rates were then in effect from Aberdeen to stations on either side of Scranton nor the fact that a proportional rate of 10 cents per 100 pounds was subsequently established to Scranton, can change the character either of the movement into Aberdeen or the subsequent movement out of Aberdeen. Each was a local movement under local billing; and at the time the lumber reached Aberdeen there was no physical connection between the Great Northern and the St. Paul tracks by which it could have been made a through movement; in the absence, at least, of an applicable through rate and a tariff provision for a transfer of the lumber by dray or otherwise across Aberdeen from one line to the other. The complainant, with commendable zeal, was endeavoring to take time by the forelock and to stock its Scranton yard with lumber to meet the local demand as soon as the Puget Sound line reached that point. But it could do this only on rates that were then legally available. To accord to the complainant's shipments the benefit of the proportional rate established about a year after the lumber had reached Aberdeen on local billing and as much as five months after most of it had reached Scranton as local movements from Aberdeen would be in violation of every principle involved in the administration of this law.

The complaint must be dismissed and it will be so ordered.

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No. 3027.

SNYDER-MALONE-DONAHUE COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY  
ET AL.

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*Submitted May 1, 1910. Decided June 2, 1910.*

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On the record, carload rate of 43 cents per 100 pounds on stock cattle from South Omaha, Nebr., to Cushman, Mont., not found unreasonable.

*Edward P. Smith* for complainant.

*J. E. Kelby* for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

On December 5, 1908, complainant shipped via the lines of the defendants four carloads of stock cattle from South Omaha, Nebr., to Cushman, Mont. It is alleged in the complaint that the joint through rate of 43 cents per 100 pounds was unreasonable to the extent that it exceeded 30½ cents per 100 pounds. Reparation in the sum of \$117.60 is asked.

At the time of shipment the Chicago, Milwaukee & St. Paul had in effect a rate on stock cattle in carloads from South Omaha to Lavina, Mont., of 75 per cent of the 41-cent rate on fat cattle, or 30½ cents. Lavina is about 6 miles from Cushman and is not reached by the Burlington or the Great Northern.

Complainant asserts that prior to making shipment its representative was informed by the agent of the Chicago, Burlington & Quincy in South Omaha that the rate on stock cattle from that point to Cushman would be no higher than the rate via the Chicago, Milwaukee & St. Paul, and that, acting on this information, the shipments were routed via the lines of the defendants.

It appears that the Chicago, Burlington & Quincy had rates on stock cattle from South Omaha to points in Montana on its own line of 75 per cent of the rates on fat cattle. The Great Northern declined to join in such rates to points on its line, and it has no rates on that basis.

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There is no evidence that the rate charged was unreasonable, except that there was a lower rate to a near-by point via another line. This of itself has never been held sufficient to establish that the rate over a particular line is unreasonable. In addition it is to be noted that the rate over the Chicago, Milwaukee & St. Paul to Lavina is a one-line rate for a one-line haul, while from South Omaha to Cushman the rate divides between two carriers.

The Supreme Court of the United States has decided that the published schedules govern in all cases, even though the carrier's agent may have made statements at variance therewith. *T. & P. Ry. Co. v. Mugg*, 202 U. S., 242.

We are unable to find from this record that defendants' charge on the shipments in question was unreasonable or otherwise unlawful.

The complaint will therefore be dismissed.

18 L. C. C. Rep.



No. 3098.  
WOODWARD, WIGHT & COMPANY  
v.  
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY  
ET AL.

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*Submitted April 26, 1910. Decided June 2, 1910.*

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Iron conveyor chains, link belting, and machinery sprocket chains are not properly to be included in the term "chains" as used to designate the application of a special commodity rate on certain iron articles, but are properly rated as machinery and parts thereof under Southern Classification. Complaint dismissed.

*Russell P. Fischer and L. C. Perkins* for complainant.

*Sidney F. Andrews* for Illinois Central Railroad Company.

*C. M. Dawes and George W. Crosby* for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

**CLARK, Commissioner:**

This case involves a claim for reparation in the sum of \$377.68, on six carloads of "chain" shipped from East Moline, Ill., to New Orleans, La., between October 14, 1907, and December 2, 1908. Informal complaint was made to the Commission on September 20, 1909.

The rate charged was 41 cents per 100 pounds. Complainant alleges that 26 cents per 100 pounds would have been a reasonable charge and asks that the rate in the future shall not exceed that amount. The real controversy turns upon the question of how the commodity should be classed. In its petition complainant alleges that the commodity is chains and should have had the benefit of the lowest rate on chains. At the hearing the representative of complainant described the commodity as "iron conveyor chains, sprocket chains, sometimes called link belting."

These shipments from East Moline are governed by Southern Classification and the sixth class rate was applied. This Classification provides for two classes of chains, described under different headings. Under the head of "Chains" that commodity is classified as sixth class. Under the head of "Machinery" conveyor chains,

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sprocket chains, etc., appear as part thereof and are also rated sixth class. There is a special commodity rate between East Moline and New Orleans on "chains," "packed," in carloads, of 26 cents. The chains here in question moved in carloads, and were riveted together in bundles, but were not packed in the sense that they had any form of outside covering.

In the informal correspondence with the Commission, and in both the petition and the answers, the question between the parties seemed to be whether the chains were packed or unpacked. The carriers claim that they were not packed, but were in bundles, and under the Southern Classification took the sixth class rate. Although this was thoroughly gone into at the hearing, yet the substantial defense was that this commodity did not come under the ordinary designation of chain, upon which the commodity rate of 26 cents was applicable if it had been packed; but that these shipments were, in fact, sprocket chains and came under the head of machinery, upon which the only rate applicable was the sixth class rate. Complainant contends that because this commodity tariff used the word "chains" without defining or limiting it in any way, that it would, therefore, include the shipments of sprocket chains here involved. On the other hand, the carriers claim that the publication of the commodity tariff on "chains" took out of the Southern Classification only those ordinary chains which are generally covered by that term and in no-wise affected the rate on sprocket chains, which would come under the head of machinery.

The evidence was clear that these sprocket chains, conveyor chains, link belting, etc., are used principally, if not exclusively, for the transmission of power, largely in connection with machinery in sugar mills, etc., and that they are of somewhat greater value than the ordinary chain. It also appeared that a number of the articles carried under the special commodity rate of 26 cents, which is known as the "special iron rate," are articles of as great value as these sprocket chains, while many of them are of less value. This special iron rate covers bolts, bushes, plugs, couplings, railway track material, etc.

Were these shipments properly classified as machinery? If so, was the rate of 41 cents unreasonable?

We are of the opinion that these shipments were properly classified and on the record, we think the rate charged was not unreasonable. It is evident that these sprocket chains are used for an entirely different purpose and are of much greater value than the ordinary chain of commerce and we would not be justified in separating this part of machinery from the general machinery rate unless, at the same time, we separated various other portions of the completed machine when such parts move separately. The complaint will be dismissed:

HARLAN, *Commissioner*, dissents.

18 I. C. C. Rep.

No. 2944.  
COLUMBIA GROCERY COMPANY  
v.  
LOUISVILLE & NASHVILLE RAILROAD COMPANY

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*Submitted May 4, 1910. Decided June 2, 1910.*

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Defendant's rate system is built upon Nashville as the base point, at which it is alleged low rates are forced by competition of water carriage and of other carriers, and rates to intermediate points are made in combination on Nashville, except when controlling competition at an intermediate point forces or justifies a different adjustment; complaint alleges that rate on sugar from New Orleans, La., to Columbia, Tenn., of 31 cents per 100 pounds so constructed is unjustly discriminatory against Columbia and in favor of Nashville and Decatur; *Held*, That this system of rate making has countenance under the law as it is at present and as it has been construed by the Supreme Court of the United States, and that, therefore, it is not found that under present conditions the adjustment unduly discriminates against complainant. *Interstate Commerce Commission v. A. M. Ry. Co.*, 168 U. S., 172; *Interstate Commerce Commission v. L. & N. R. R. Co.*, 190 U. S., 273; *Interstate Commerce Commission v. W. & A. Ry.*, 181 U. S., 29.

*William A. Guild* for complainant.

*N. W. Proctor*, on behalf of *Ed. Baxter* and *Perkins Baxter*, for defendant.

REPORT OF THE COMMISSION.

*CLARK, Commissioner:*

Rate of 31 cents per 100 pounds on sugar, carloads, from New Orleans, La., to Columbia, Tenn., is challenged as unreasonable, unduly discriminatory, prejudicial, and in violation of section four of the act, as compared with the rates on the same commodity from the same point of origin to Nashville, Tenn., 15 cents; Decatur, Ala., 24 cents; Louisville, Ky., 16 cents; Clarksville, Tenn. (depot delivery), 15 cents; Clarksville (store delivery), 17 cents; Bowling Green, Ky., 20 cents; Murfreesboro, Tenn., 25 cents; Gallatin, Tenn., 25 cents; and Franklin, Tenn., 51 cents. Reparation is asked.

Columbia is a town of approximately 8,000 inhabitants. It is located on the main line of defendant and on a branch line of the Nashville, Chattanooga & St. Louis Railway, 577 miles north of New Orleans, 76 miles north of Decatur, Ala., and 45 miles south of Nashville, Tenn., and is not on or near any navigable water course.

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There are two wholesale grocery houses in Columbia and they handle approximately from 18 to 25 carloads of sugar a year each. The 31-cent rate to Columbia is made on the Nashville combination. There is no difference between the carload and the less-than-carload rates from Nashville or from Decatur, and as the aggregate of the in-and-out rates make less from Nashville and Decatur than from Columbia it is possible for Nashville dealers to ship into and beyond Columbia, down to within a few miles of Decatur, and for Decatur dealers to ship to Pulaski on a parity with Columbia dealers. In other words, under the present adjustment of rates Columbia is on a parity with Nashville only in a restricted area in its immediate vicinity and has no advantage even in Columbia.

A carload of sugar is worth from \$1,800 to \$2,000. At a market price of \$5.25 per 100 pounds complainant's profit is about 10 cents per 100 pounds. The aggregate freight charges on a carload of 35,000 pounds from New Orleans are \$108.50. Complainant's business has increased under the present freight rates, but it ascribes this to increase in population and consumption.

On behalf of complainant it was testified that movement of sugar by water from New Orleans to Nashville, Bowling Green, and Clarksville is impracticable, because it would have to be transferred several times, is more subject to damage by water than by rail, the boat terminal facilities are generally inadequate in that there is no protection against weather conditions, and the trade conditions, i. e., payment after seven days, less one per cent, and possible decline in market price, makes it impracticable to await the longer period necessary for transportation by water. So far as the reasonableness of the rate in and of itself is concerned, complainant submitted no testimony. It is contending for an adjustment of rates to enable it to compete on an equitable basis with Nashville and Decatur.

Complainant relies on the decision of the Commission in *Payne-Gardner v. L. & N. R. R. Co.*, 13 I. C. C. Rep., 638, in which it was held that the rate on sugar from New Orleans to Gallatin, Tenn., 652 miles from New Orleans, should not exceed 25 cents. In view of the findings of fact in that case it is unnecessary to refer to the location and circumstances and conditions surrounding the transportation to Nashville, Louisville, Bowling Green, Gallatin, and Murfreesboro, except to the extent that the facts brought out in this case are different.

The local distance scale rate of defendant from New Orleans to Columbia is 64 cents. Sugar in carloads is rated fifth class in Southern Classification. The fifth class rate from New Orleans to Columbia is 57 cents; sixth class, 51 cents. The local distance scale rate for 45 miles, the distance from Nashville to Columbia, is 22 cents. Defendant shows that the rate of 31 cents is lower by from 31 to 65 cents than

the rates from New Orleans to other points in the south approximately the same distance from New Orleans as is Columbia, and that the rate of 16 cents from Nashville to Columbia is as low as or lower than the local scale rate charged by numerous other roads in the south for a distance of 45 miles. It is also shown that the present rates on sugar from New Orleans to Pulaski, Tenn., and Athens, Ala., which are on the main line of defendant, 33 and 61 miles south of Columbia, are, respectively, 45 and 34 cents per 100 pounds; that there is a wholesale grocery at Pulaski, and that the situation from a transportation standpoint at those two points is similar to that at Columbia, except that Columbia is nearer to Nashville. Defendant insists that these facts, together with a consideration of the proportion which the transportation charges bear to the value of sugar and the showing that there has been and is a free movement to Columbia, indicates that the rate is reasonable, considered by itself.

Defendant contends in this case, as was contended in the *Payne-Gardner case*, *supra*, that the 15-cent rate to Nashville was established in compliance with the order of the Commission in *Phillips-Bailey & Co. v. L. & N. R. R. Co.*, 8 I. C. C. Rep., 93, in which it was held that no justification was shown for a higher rate to Nashville than to Louisville.

Reiterating that the *Phillips-Bailey case*, *supra*, established that the rate to Nashville should be no higher than that to Louisville, and directing attention to the fact that the rate to Nashville is now one cent lower than to Louisville, it is apparent that the quantum of the rate to Nashville in no wise affects the relation as between Nashville and Columbia. The differential to Columbia above Nashville remains the same.

Decatur, Ala., is located on the Tennessee River, and is reached by the Southern Railway, as well as by defendant. It is testified that the rate thereto from New Orleans is made the same as to Chattanooga, but not higher than the combination on Memphis, the Memphis rate being very low because of Mississippi River competition.

Clarksville, Tenn., is on the Cumberland River, the Tennessee Central Railroad, and the line of defendant. Defendant justifies the 15-cent rate to that point by Cumberland River competition.

Franklin, Tenn., is 18 miles south of Nashville and 27 miles north of Columbia. The 51-cent rate to Franklin is the fifth class rate from New Orleans. The combination on Nashville is, however, 25 cents. Franklin is reached by an electric railway and an excellent pike between Nashville and Franklin.

It is argued that the circumstances and conditions surrounding and controlling the adjustment of rates from New Orleans to the points mentioned in the petition are substantially dissimilar from those obtaining at Columbia.

Complainant contends that in view of the distance from New Orleans to Columbia, and the circumstances and conditions surrounding the transportation of sugar to that point, the rate should not exceed 20 cents per 100 pounds, which is the present rate to Bowling Green, Ky., and that a decision by the Commission that the present rate of 31 cents to Columbia does not violate any provision of the act to regulate commerce, would in its essence be a reversal of the decision in the *Payne-Gardner case*. Defendant insists that that case was not intended as a declaration that all future complaints of preferences from noncompetitive points would be decided in favor of such points and against the competitive points, but that it holds that when a preference has been found to exist in favor of a trade center, arising from the voluntary act of the carrier and not caused by controlling competition, then, and in that event, the Commission will hold such preference undue and will prescribe relatively fair rates. In this connection *Eau Claire Board of Trade v. C. & St. P. Ry. Co.*, 5 I. C. C. Rep., 264, is cited:

The principle that rates should be fixed in inverse proportion to the natural advantages of competing towns, with the view of equalizing commercial conditions, is a proposition unsupported by law. Each community is entitled to the benefits arising from its location and natural conditions, and any exaction of charges unreasonable in themselves or relatively unjust, by which those benefits are neutralized or impaired, contravenes the policy of the act.

The fundamental objection of defendant to a reduction in the rate to Columbia is that it would involve a departure from the basing-point system; that is, the lowest combination of rates to basing points plus the locals from the basing points. The question before the Commission is whether or not the rate to Columbia, under whatever system it may have been established, violates the act in the particulars alleged.

Defendant fears that if the Commission should "order a departure from the combination basis at Columbia, \* \* \* then other points, such as Pulaski, Tenn., will probably complain and demand similar departures from the combination basis. Then Athens, Ala., might make similar complaint, and then some other town, and so on ad infinitum." But if the rate complained of is unreasonable or unduly discriminatory, this would not be a valid objection. *Farmers Warehouse Co. v. L. & N. R. R. Co.*, 12 I. C. C. Rep., 457. If the rate adjustment is built and is to be maintained upon the basing-point system it should be applied alike to all places where real dissimilarity of circumstances or controlling competition do not exist. We pause here to remark that the 51-cent rate to Franklin, in face of the 25-cent combination on Nashville, is wholly inconsistent with the basis which defendant contends for.

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The rates to Louisville, Clarksville, Bowling Green, Murfreesboro, and Franklin do not affect complainant from a competitive standpoint. Its competition is with Nashville and Decatur. But complainant insists that the Bowling Green rate of 20 cents is the proper measure of the rate to Columbia. It is testified that the actual movement of sugar from Evansville to Bowling Green by boats from January 1, 1908, to December 1, 1909, during which time the 20-cent rate was in effect, was 794 barrels and 666 sacks. Defendant's freight-traffic manager testified that defendant had no financial interest in the Evansville & Bowling Green Packet Company. But its agent at Bowling Green is the president of the packet company, and complainant asserts that this fact indicates a dependent relation between defendant and the packet line and negatives competition of controlling force. If competition between complainant and Bowling Green dealers were shown, this relationship between these carriers, slight though it may appear to be, might be of real weight and importance. It is hardly to be assumed that defendant would retain as its agent the president of a competing carrier if the competition were more than an empty show, or unless there were a distinct relationship or understanding under which defendant's interests would not suffer.

But as was said in *Interstate Commerce Commission v. Alabama Midland Ry. Co.*, 168 U. S., 172:

The volume of carriage by the river is now comparatively small, but the controlling force of that water line remains in full force, and must ever remain in force as long as the river remains navigable to its present capacity.

We found in the *Payne-Gardner case* that the Cumberland River is navigable to Gallatin at the same season of the year as to Nashville and that the water rate to Gallatin and Nashville from Paducah was the same. We also found that Bowling Green jobbers could compete in territory contiguous to Gallatin to the disadvantage of complainant in the *Gallatin case*. There is no water competition, either actual or potential, at Columbia, and, as before stated, Bowling Green does not compete with Columbia. Gallatin is beyond Nashville and Columbia is between New Orleans and Nashville. While not necessarily important, there are no jobbing houses at any of the points between Nashville and Bowling Green except at Gallatin. We are of the opinion that this case is not governed by the *Payne-Gardner case*.

Nashville is a trade center. *Chamber of Commerce of Chattanooga v. S. Ry. Co.*, 10 I. C. C. Rep., 111. The rates thereto were established on the theory of water competition of compelling or potential force, and in competition with other carriers. Even if the force of water competition has been overestimated it has certain advantages

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of location the benefits of which it is entitled to retain. The same may be said of Decatur.

It is true that Columbia is at a disadvantage as compared with Nashville and Decatur, but the right of the defendant to make a lesser charge to Nashville and Decatur than to Columbia—

is not destroyed by the mere fact that incidentally the lesser charge to the competitive point may seemingly give a preference to that point, and the greater rate to the noncompetitive point may apparently engender a discrimination against it. We say seemingly on the one hand and apparently on the other because in the supposed cases the preference is not "undue" or the discrimination "unjust." *E. T., V. & G. Ry. Co. v. I. C. C.*, 181 U. S., 1.

The controlling effect of water competition upon rate adjustments in the southeast and the propriety of maintaining rates to intermediate points higher than to terminal or basing points, making the intermediate rates in combination on such terminal or basing point, have been passed upon in numerous cases by this Commission and by the courts on appeal from decisions of the Commission, and must be considered as settled questions. *Montgomery Freight Bureau v. L. & N. R. R. Co.*, 17 I. C. C. Rep., 521.

As we understand defendant's system of rates here involved, it is built upon Nashville as a base point at which it is alleged low rates are forced by competition of water carriage and of other carriers, and rates to intermediate points are made in combination on Nashville except when controlling competition at an intermediate point forces or justifies a different adjustment. As has been noted, this system has countenance under the law as it is at present and as it has been construed in several instances by the Supreme Court of the United States, *Interstate Commerce Commission v. A. M. Ry. Co.*, 168 U. S., 172; *Interstate Commerce Commission v. L. & N. R. R. Co.*, 190 U. S., 273; *Interstate Commerce Commission v. W. & A. Ry. Co.*, 181 U. S., 29. Those constructions of course do not afford justification for any undue discrimination, and adjustments made thereunder must be consistent.

Changes in the long-and-short-haul provision of the act are now being considered by the Congress. It is possible that change in that feature of the law will require an entire change in defendant's rate system.

We do not find that under present conditions the adjustment unduly discriminates against complainant, and the complaint must, therefore, be dismissed.

18 I. C. C. Rep.



No. 2439.  
SPRING HILL COAL COMPANY  
v.  
ERIE RAILROAD COMPANY ET AL.

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*Submitted April 8, 1910. Decided June 2, 1910.*

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Complaint for the establishment of through route and joint rate over certain lines dismissed because of the existence over other lines of a "reasonable through route."

*David N. Heller* for complainant.

*H. A. Taylor* for Erie Railroad Company.

*Lewis E. Carr* for Delaware & Hudson Company.

*George Stuart Patterson* for Pennsylvania Railroad Company.

REPORT OF THE COMMISSION.

**COCKRELL, Commissioner:**

This complaint was filed May 3, 1909. The complainant has coal mines at Jermyn, Pa., on the lines of defendants, Delaware & Hudson and New York, Ontario & Western railroads, and desires to ship coal to points in New York via Carbondale, Pa. It avers that there is no through route and joint rate from Jermyn to the desired points in New York state, and that defendants refuse to establish a through route and joint rate. The prayer is for an order compelling the defendants to establish such a through route and joint rate.

Each of the three defendants filed separate answers denying the material averments of the complaint and asserting that there is a through route and joint rate from complainant's mines to the desired points in New York over the lines of defendants, the Delaware & Hudson to Wilkesbarre and thence by the Pennsylvania Railroad.

The attorney for the complainant, on May 28, 1909, wrote the Commission referring to the answers of defendants showing a through route and joint rate by another route than the one asked for by complainant, and inquired if it was necessary to reply to that defense. The chief examiner promptly advised him with a copy of the rules of practice. On July 3, 1909, complainant was advised fully in regard

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to the through route and joint rate named by the defendants, that our jurisdiction to establish a through route and joint rate existed only when no reasonable or satisfactory through route exists and was asked what further action was desired. The subsequent correspondence culminated in a letter from complainant expressing a desire to have the case dismissed.

An order will be entered accordingly.

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No. 2865.

W. W. RUTLAND AND E. L. RUTLAND, PARTNERS, DOING  
BUSINESS AS THE CANADIAN VALLEY GRAIN COMPANY,

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY  
ET AL.

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*Submitted March 11, 1910. Decided June 2, 1910.*

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In the absence of a joint rate from a local station on the line of one carrier to a point on the line of another carrier, it is not incumbent upon initial carrier to post at point of origin tariffs showing combination of local rates applicable to the shipment. Reparation, claimed because of failure so to post, denied.

*L. F. Bird* for complainants.

*M. L. Bell* and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

*K. M. Wharry* for St. Louis, Iron Mountain & Southern Railway Company.

#### REPORT OF THE COMMISSION.

**COCKRELL, Commissioner:**

The complainants are partners doing business under the name of the Canadian Valley Grain Company, at Calvin, Okla., a station on the line of defendant, the Chicago, Rock Island & Pacific Railway Company, hereinafter designated the Rock Island. They allege that about May 5, 1908, the said defendant had no tariff on file at said station showing rate on snapped corn to Arkadelphia, Ark., over the lines

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of the defendants, to which point they desired to ship a carload of snapped corn. Consequently, they applied to the agent for a rate. Upon inquiry by wire of the division freight agent at Oklahoma City they were quoted a rate of 24½ cents. Relying upon this advice they made a sale to the Arkadelphia Milling Company, and the shipment moved under waybill naming the 24½-cent rate with routing from Calvin to Little Rock, Ark., via Rock Island, and from Little Rock to destination via line of defendant St. Louis, Iron Mountain & Southern Railway, hereinafter designated the Iron Mountain. At destination charges were collected on a combination of local rates of 29½ cents at weight of 40,000 pounds, amounting to \$131. Complainants allege an actual loss of \$56.14 by reason of the failure of defendant the Rock Island to post at Calvin, as required by section 6 of the act, a tariff naming rate lawfully applicable to the shipment. They ask reparation in the amount of such loss under section 8 of the act, and claim that if the tariff had been posted they would have included the rate assessed in their charges for the corn and no loss would have resulted to them. There is no claim that the rate charged was unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial.

Section 6 of the act says:

That every common carrier subject to the provisions of this act shall file with the Commission created by this act and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print, and keep open to public inspection, as aforesaid, the separately established rates, fares, and charges applied to the through transportation. \* \* \* Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected.

At the time of the shipment there was no "through route and joint rate" from Calvin to Arkadelphia and the rate lawfully applicable was the combination of locals. Defendant Rock Island, had on file at Calvin its local tariff naming rate on snapped corn from Calvin to Little Rock, the junction point with defendant Iron Mountain. This was the "separately established rate applied to the through transportation" and constituted the Rock Island's proportion of the combination rate collected. Nowhere in the act is one carrier required to post at a local station on its line a tariff naming a local rate applicable only over the line of another carrier. In the view of the Commission, defendant Rock Island, did not in this case

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violate the provisions of section 6 of the act and is not liable for the damages claimed. The complaint will be dismissed and an order will be issued accordingly.

The papers filed with the Commission indicate an overcharge in weight on the shipment, charges having been assessed on weight of 40,000 pounds. While the bill of lading shows weight of the corn to be 30,100 pounds, the actual weight, according to invoice from complainants to consignee and admitted by the freight claim agent of defendant Rock Island, was 30,555 pounds. Rock Island tariff naming the rate of  $16\frac{1}{2}$  cents collected for the movement from Calvin to Little Rock provides, "minimum weight marked capacity, except when car is loaded to full bulk capacity actual weight, but not less than 24,000 pounds."

The bill of lading, signed by D. E. Cox, agent at Calvin, contains notation, "This car loaded to roof."

It is apparent, therefore, that the actual weight of the shipment should have been applied and that the defendant Rock Island should refund to complainant the sum of \$15.58, constituting charges on the overweight of 9,445 pounds, at rate of  $16\frac{1}{2}$  cents. It also appears that the minimum on snapped corn over the line of defendant Iron Mountain was 30,000 pounds, making the same overweight, which, on basis of the rate collected by the Iron Mountain, 13 cents, makes an overcharge of \$12.29.

18 I. C. C. Rep.

No. 2933.

SUNDERLAND BROTHERS COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY  
ET AL.

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Submitted February 12, 1910. Decided June 2, 1910.

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Rate of \$3.75 per net ton on soft coal from Peoria, Ill., to Ainsworth and Valentine, Nebr., not found unreasonable. Reparation denied.

*C. E. Childe* for complainant.

*C. C. Wright* for Chicago & North Western Railway Company.

## REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

During November and December, 1907, and January and February, 1908, there were shipped from Christopher, Ill., to complainant at Ainsworth and Valentine, Nebr., 14 carloads of soft coal, weighing in the aggregate 815,300 pounds. The shipments moved over the Chicago, Burlington & Quincy to Peoria, Ill., and thence over the Chicago & North Western to destinations. The rate collected was a combination of \$4.45 per net ton based on the Burlington rate of 70 cents Christopher to Peoria and the North Western rate of \$3.75, Peoria to destinations. The aggregate charges were \$1,811.85. No complaint is made of the Burlington rate, but complainant alleges that the charge by the North Western of \$3.75 was excessive to the extent that it exceeded \$3.526 and reparation is asked in the sum of \$89.12.

Valentine and Ainsworth are both located on the North Western line and are respectively 781.7 miles and 735 miles from Peoria. The distances from Christopher to Valentine and Ainsworth over the route the traffic moved are respectively 971 and 924 miles.

Effective June 1, 1909, through rates were published by defendants from Christopher to Ainsworth and Valentine of \$4.10 and \$4.25, respectively.

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Complainant's case consists largely of statements of comparisons on a ton-mile basis of rates from Peoria to Valentine and Ainsworth with rates on coal from Peoria, Manitowoc, Chicago, and East St. Louis to other points on defendants' lines. These comparisons show that the \$3.75 rate produced a slightly greater revenue than the rates with which comparison is made. No testimony was offered by complainant and there is nothing in the record upon which a conclusion can be reached respecting the value of the comparisons made. The revenue per ton per mile on the \$3.75 rate is 4.8 mills on shipments to Valentine and 5.1 mills on shipments to Ainsworth. Rates on this traffic which yield about 5 mills per ton per mile in the territory involved we are unable to find are unreasonable. Furthermore, it has been frequently held by the Commission that the voluntary reduction of a rate by a carrier is not of itself such a proof of the unreasonableness of the former rate as to form a proper basis for an award of reparation.

In *Sunderland Bros. Co. v. C. & N. W. Ry. Co.*, 16 I. C. C. Rep., 212, the Commission fixed a maximum rate on coal from Sterling, Ill., to Wausau, Nebr., of \$2.70 per ton on complaint assailing the rate between these points as a part of a combination rate from Christopher to Wausau. This resulted in a combination rate from Christopher to Wausau via Sterling of \$3.84 per ton or 61 cents less than the rate of \$4.45 per ton here in question. Valentine and Ainsworth are more than 100 miles west of Wausau and the Commission is not prepared upon this record to find that an additional charge of 61 cents per ton for a longer haul through a different gateway is unreasonable. The complaint will therefore be dismissed.

No. 3100.  
HENDERSON & BARKDULL  
*v.*  
ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY  
COMPANY.

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*Submitted April 16, 1910. Decided June 2, 1910.*

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Complainants' shipments of cotton, uncompressed, were destroyed by fire after arrival at the compress; and petition seeks either reparation of the amount paid on the inbound expense bills or an order requiring defendant to honor said expense bills for a reasonable time on new cotton for outbound movement. Complaint dismissed.

*Hill, Brizzolara & Fitzhugh* for complainants.

*M. L. Clardy, J. C. Jeffery, and Thomas B. Pryor* for defendant.

REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

Complainants, with place of business at Fort Smith, Ark., are engaged in buying and selling cotton, and ship uncompressed cotton to Fort Smith and compressed cotton beyond. The substance of their voluminous complaint is that between September 9, 1908, and April 28, 1909, they shipped to the Fort Smith compress 1,890 bales, uncompressed, from various stations in Oklahoma and Arkansas over the lines of defendant and its connections, and paid the local rates thereon from origin to the compress under the terms of the concentration tariff of defendant, which permitted reshipment to final destination within the concentration season from September 1 of one year to and including August 31 of the year following; that on May 17, 1909, the said 1,870 bales, which had been compressed, were destroyed by fire in the compress; that the tariff made no provision for loss on account of fire, storms, the act of God, or other unavoidable casualties which might prevent reshipment prior to August 31; that the limitation to August 31 is unreasonable, unjust, and discriminatory; that they paid the freight charges to the amount of \$2,378, and deducting therefrom the concentration charges of \$682 left the sum of \$1,696, for which they were entitled to a claim against defendant upon producing bills of lading

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covering an equal or greater amount of compressed cotton than called for in the freight bills for such burnt cotton; that after August 31, 1909, they bought bales of the new crop and offered them to defendant for outward shipment on the lading and freight bills for the inward shipment of the burnt bales, and defendant refused to allow outward shipment or credit to be given because not presented prior to August 31, 1909; that, effective September 1, 1909, defendant amended its concentration rule by adding thereto these words:

Except that in case of fire destroying cotton or compress it will in such case be permissible, upon approval of the freight traffic manager of this company, to accept expense bills during the succeeding season, September 1 to December 31, inclusive, the rates, through charges, and regulations in effect when the shipment originated at the initial points to govern—

but such amendment was not effective in time to enable them to take advantage thereof.

They claim that defendant's rule, until amended as hereinbefore quoted, was unreasonable, and owing thereto they have been damaged to the extent of the net amount due from their expense bills, \$1,696. They pray for reparation in that sum or that defendant be authorized and required to honor the expense bills for a reasonable term.

Defendant denies that the local rates from points of origin to the compress were unreasonably high or in violation of law, or that the privilege for concentration was in any manner unreasonable, or that complainants are entitled to any reparation or other relief.

At the hearing Mr. Barkdull, of complainant firm, testified as follows:

If defendant railroad company had permitted the time of utilizing these expense bills to have been extended to October 31, the plaintiffs could and would have purchased cotton on the Fort Smith market after the new crop came in and shipped it out on the expense bills in question. It has always been permitted to ship out cotton purchased on the streets to the same effect as cotton brought in by railroads. There are usually from three to seven thousand bales annually brought into Fort Smith market which do not come over the railroad, and there was last year sufficient local cotton brought into Fort Smith after September 1 and before October 31 to have enabled the plaintiffs to have purchased an amount equivalent to the cotton destroyed. After the fire the defendant railroad amended its tariff rule so as to allow expense bills to be utilized until December 31, when the cotton had been destroyed by fire.

This Commission can not approve complainants' prayer that defendant be authorized and required to honor the expense bills of the burnt cotton. In a conference ruling on June 29, 1909, we declared: "It is the sense of the Commission that no transit privilege should extend beyond one year," and in our report "*In the Matter of Substitution of Tonnage at Transit Points*," 18 I. C. C. Rep., 280, we further declared:

A milling, storage, or cleaning in transit privilege can not be justified on any theory except that the identical commodity or its exact equivalent or its product is  
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finally forwarded from the transit point under the application of the through rate from original point of shipment. It is therefore not permissible at transit point to forward on transit rate commodity that did not move into transit point on transit rate, or to substitute a commodity originating in one territory for the same or like commodity moving into transit point from another territory, or to make any substitution that would impair the integrity of the through rate.

The amendment of defendant to its concentration rule, hereinbefore quoted, opens a wide door for the unlawful substitution of local cotton delivered by wagons at every compress for cotton delivered by railroads and destroyed by fire.

As to the prayer for reparation, the defendant's tariff specified the rates from points of origin to the concentration compress, required payment on delivery at compress, and granted to the shipper the right to keep such cotton for such time and for such treatment as desired and then to reship to final destination on the through rate from origin. The right is conditioned that the shipper shall redeliver the cotton to the carrier for the haul to final destination and within the time specified. The protection of the through rate depends entirely upon the shipper delivering the cotton for reshipment within the time named.

In *Anderson, Clayton & Co. v. St. L. & S. F. R. R. Co.*, 17 I. C. C. Rep., 12, the complainant sought to recover the amount of the charges collected for the movement from Lawton to Chickasaw at the rate of \$1.50 a bale on cotton at compress destroyed by fire. The Commission said:

Transit privileges are allowed upon the theory that the inbound shipment may be stopped and the identical freight or its product, or its exact equivalent of the same commodity moving into the transit point under the same privilege, may be shipped to ultimate destination under the through rate from point of origin. If for any reason reshipment becomes impossible, the carrier is under no obligation to refund the charges collected for the movement to the transit point—

And the case was dismissed.

In this case the complainants paid the freight charges for the movement to the transit point—Fort Smith, Ark. Under the circumstances we can not find that they were unreasonable or that complainants are entitled to any reparation.

The complaint will be dismissed.

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No. 2815.

THEO. FATHAUER COMPANY

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY  
COMPANY ET AL.

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Submitted January 8, 1910. Decided June 2, 1910.

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The Iron Mountain road, with the concurrence of the Mississippi, Arkansas & Western Railway, a tap line, published lumber rates from Shults, Ark., a point on the tap line, via Blissville, Ark., the junction point, one cent higher than the rates from Blissville, and allowed the tap line a proportion of two cents thereof. Notwithstanding complainant's shipments were loaded into cars furnished by the Iron Mountain on a spur of the tap line within the corporate limits of Blissville, and from the lumber pile situated adjacent to the Iron Mountain siding at Blissville, the tap line billed said shipments as from Shults; Held, That the exaction of the Shults rate was unreasonable to the extent that it exceeded the rate from Blissville on the Iron Mountain. Reparation awarded. Allowance made by the Iron Mountain to the tap line prohibited by *Star Grain & Lumber Co. v. A., T. & S. F. Ry. Co.*, 17 I. C. C. Rep., 338.

*Harris, Dodds & Brown* for complainant.

*James C. Jeffery* and *H. J. Campbell* for St. Louis, Iron Mountain & Southern Railway Company.

*James C. Jeffery* and *W. A. Percy* for Mississippi, Arkansas & Western Railway Company.

## REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

Complainant, a corporation engaged in the purchase and sale of hard-wood lumber, with principal place of business in Chicago, Ill., by its petition filed September 1, 1909, alleges that numerous carloads of hard-wood lumber were shipped in 1906-1908 to it at Chicago by the Bliss-Cook Oak Company, on which complainant paid the freight charges; that defendants conspired together and caused said shipments to be billed from Shults, Ark., in order that complainant be compelled to pay a rate of one cent per 100 pounds higher than the rate from Blissville, Ark.; that the shipments actually originated at  
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Blissville, and the Shults rate as charged was excessive and unreasonable in that it exceeded the one-cent lower rate from Blissville; that complainant purchased finished lumber and not logs, and defendants published no milling-in-transit privilege that would justify the application of a through rate on lumber from Shults to Chicago to a shipment of logs from Shults to Blissville and lumber beyond. Reparation is asked in the amount of \$463.09, constituting the alleged unreasonable charge of one cent per 100 pounds on 96 cars.

In their answers the defendant St. Louis, Iron Mountain & Southern, hereinafter designated Iron Mountain, and defendant Mississippi, Arkansas & Western Railway Company, hereinafter designated tap line, deny any violation of the act, and allege that the loading point of the lumber is situated between Shults and Blissville, and in the absence of a rate from said loading point the rate from Shults, under the intermediate clause in the published tariffs, would necessarily apply, and therefore no milling-in-transit privilege was required.

The record shows that the tap line is an industrial railroad extending from a connection with the Iron Mountain at Blissville to the timber. It consists of 8 miles of main line and an aggregate of 20 miles of spurs and was constructed to be used exclusively as a facility of the company owning the timber, formerly the Chico Lumber Company and now the Bliss-Cook Oak Company, which owns all of the capital stock of the tap line. Mr. E. G. Lazinsky, who was one of the organizers of the Chico Lumber Company, testified that the organization was completed about 1900; that the tap line was constructed by the same company to haul logs from the timber to the sawmill at Blissville and its organization as the Mississippi, Arkansas & Western Railway Company was an afterthought and did not occur until about 1902. G. W. Swain, rate clerk of the Arkansas Railroad Commission, testified that the Mississippi, Arkansas & Western Railway Company never filed, as an operating railroad, any report with that commission as required by the laws of Arkansas, and J. E. Hampton, chairman of the Arkansas tax commission, testified that his records as far back as 1903 failed to show that this road was assessed any taxes as an operating railroad or that it ever furnished his commission or the state railroad commission with a list of its taxable property until the year 1909. The rolling stock now consists of 5 locomotives and 75 freight cars which are used entirely by the Bliss-Cook Oak Company, hereinafter designated the lumber company, to move the logs from the timber to the mill and to switch cars between the mill and the tracks of the Iron Mountain, except to move a very small amount of traffic that is picked up as a mere incident in the efforts of the tap line to serve the lumber company as an adjunct or plant facility.

The only point on the tap line from which a rate is published is Shults, which is now about two and one-half miles from Blissville.

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At neither Shults nor Blissville does the tap line maintain freight or passenger stations or agents, nor is any passenger transportation performed. The lumber company's mill at which complainant's lumber was manufactured is located within 100 to 200 feet of the Iron Mountain tracks at Blissville and its yard borders the right of way of the Iron Mountain. After the logs are hauled by the tap line from the timber to the mill they are manufactured into lumber, which is piled between a spur of the tap line and a siding of the Iron Mountain. The tap line comes in from the east and connects with the Iron Mountain running north and south at three different places. Between two of these spurs and the Iron Mountain siding the mill is located and the lumber is piled. The mill, lumber pile, and actual loading point of all the lumber are located within the corporate limits of Blissville. When the lumber is forwarded to interstate destinations it is sold and billed as from Shults, which, by Missouri Pacific tariff, I. C. C. No. 8226, effective October 12, 1905, and Missouri Pacific tariff, I. C. C. No. A-1472, the present tariff, takes a rate on lumber 1 cent per 100 pounds higher than the rate from Blissville. All of the lumber is loaded into cars furnished by the Iron Mountain and from the time of loading until its delivery to the Iron Mountain does not pass outside the corporate limits of Blissville. The defendants deny that any of the lumber is loaded on the Iron Mountain siding and the tap line contends that after loading it is hauled a distance of several thousand feet over two of the spurs before being delivered to the Iron Mountain.

It is clearly practicable to load direct into cars on the Iron Mountain siding and in support of complainant's contention that many of its shipments were so loaded, the secretary of complainant testified that he actually saw one car so loaded on which complainant paid the Shults rate. Mr. Lazinsky, of the Chico Lumber Company, testified that the Iron Mountain siding up to 1905 was used entirely for the purpose of loading lumber from the lumber piles of the Chico Lumber Company. It appears in a special report on this particular tap line for the year ending June 30, 1908, filed with the bureau of statistics of this Commission, that the total freight tonnage handled during the year was estimated to consist of 62,688 tons of logging and only 18,724 tons of lumber.

Assuming, however, for the purpose of this case, that the lumber was loaded into cars on the tap line spur, the record shows that for the service of hauling such logs to the Iron Mountain tracks the tap line received from the Iron Mountain as its proportion of the Shults rate as charged the sum of 2 cents per 100 pounds, while the shipper paid for the alleged transportation from Shults to Blissville a rate of 1 cent per 100 pounds. It is conclusively shown that the lumber comprised in complainant's shipments actually originated at Bliss-

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ville and not at Shults. The Blissville rate was legally applicable to the service rendered by the Iron Mountain from Blissville. What the tap line did was not a transportation service that entitled the defendants to charge the higher rate from Shults or warranted the Iron Mountain in allowing the division of two cents out of such rate. It was a service instituted entirely as a plant facility for the lumber company. After allowing two cents to the tap line out of the rate from Shults, the revenue of the Iron Mountain on the shipments billed from Shults was 1 cent per 100 pounds less than its published rate from Blissville, so that on the average weight on each car shipped to complainant, 48,100 pounds, the Iron Mountain received \$4.81 less than its published rate from Blissville.

We find that the exaction of the Shults rate on complainant's shipments was unreasonable in and to the extent that it exceeded the published rate from Blissville on the Iron Mountain in force at the time of movement, and that defendants should refund to complainant the sum of \$333.44, with interest from June 1, 1908, as reparation for the exaction of the 1 cent difference in said rates on 70 of the 96 carload shipments covered by the complaint. No reparation is awarded on the remaining shipments, as complainant failed to show that it paid the freight charges thereon.

The statute of limitations was invoked by the defendants on some of the shipments, but it does not apply, as the complaint was filed with the Commission informally on March 6, 1908, within two years from the date said shipments were delivered.

In the case of *Star Grain & Lumber Co. v. A., T. & S. F. Ry. Co.*, 17 I. C. C. Rep., 338, this Commission considered and reaffirmed the general principles relating to tap lines as announced in *Central Yellow Pine Asso. v. V., S. & P. Ry. Co.*, 10 I. C. C. Rep., 193, and in *Central Yellow Pine Asso. v. I. C. R. R. Co.*, 10 I. C. C. Rep., 505. The substance of this case was stated in the syllabus as follows:

The Commission can not recognize as common carriers, under the act, lines that do not publish tariffs in lawful form or concur properly in lawful tariffs of other lines in which they are named as parties, or that do not file annual reports and keep their accounts in accordance with the system prescribed by the Commission, or that do not in all other respects comply with the law.

But the mere interposition between the lumber mill and the carrier of a paper railroad incorporation that calls itself a common carrier and complies with the act in those respects, but is owned by the mill or its proprietors, does not give legality to the so-called tap-line allowances or meet the requirements of the Commission. As an administrative body the Commission can not stop at the surface of a transportation problem because its form and outward appearance are regular, but must reach the actual situation and examine its real substance, and thus be able to enforce the prohibitions as well as the requirements of the act.

The underlying principle of the law is to forbid preferences, discriminations, and departures from the published rates; and any allowance or division made to or with

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a tap line, whether incorporated in form as a common carrier or not, that is owned or controlled, directly or indirectly, by a lumber mill or by its officers or proprietors, and, beyond the logs that it hauls to the mill, has no traffic except such as it may pick up as a mere incident to its effort to serve the mill as an adjunct or plant facility, is a preference and discrimination and an unlawful departure from the published rate.

The allowance of two cents out of the rate from Shults, made by defendant, Iron Mountain, to the tap line, is clearly prohibited by this report. From the special report on this tap line, hereinbefore noted, it appears that effective October 4, 1905, the Iron Mountain allowed the tap line three cents per 100 pounds on shipments covered by joint freight tariff 4929, but the report does not disclose whether this allowance is still made. The present tariff of the Iron Mountain, concurred in by the tap line, names the joint rate from Shults, and it is presumed that the tap line still receives the proportion of two cents therefrom. A further investigation of this feature of the case will be had and no order in regard to the allowances mentioned will now be issued.

18 I. C. C. Rep.

No. 2214.  
BASH FERTILIZER COMPANY  
v.  
WABASH RAILROAD COMPANY ET AL.

*Submitted February 9, 1910. Decided June 2, 1910.*

1. Complainant, manufacturing commercial fertilizers at Prairie Switch, Ind., asks lower rates on acid phosphate from Baltimore, Md., Buffalo, N. Y., Washington Court House, Ohio, and the Tennessee fields; *Held*, That lower rates should be established from Buffalo and Washington Court House.
2. Complainant asks for the same rates on phosphate rock and acid phosphate, for transit privileges, and for reparation; *Held*, That acid phosphate is of higher grade than the crude rock, and while the carriers may rate them together the Commission is not prepared on this record to order such rating; and that complainant is not entitled either to transit privileges or to reparation.

*C. S. Bash* and *James Manahan* for complainant.

*N. S. Brown* and *W. H. Wylie* for Wabash Railroad Company.

*C. B. Fernald* for Pittsburg, Cincinnati, Chicago & St. Louis Railway Company; Pennsylvania Railroad Company; Pennsylvania Company; Northern Central Railway Company; and Grand Rapids & Indiana Railway Company.

*William Ainsworth Parker* for Baltimore & Ohio Railroad Company.

*William J. Vesey* for Cincinnati, Hamilton & Dayton Railway Company and Judson Harmon, receiver thereof.

REPORT OF THE COMMISSION.

**COCKRELL, Commissioner:**

This case brings in issue the reasonableness of the rates on phosphate rock and acid phosphate, otherwise known as acidulated phosphate rock, from Baltimore, Md., Buffalo, N. Y., the Tennessee phosphate fields, and Washington Court House, Ohio, to Prairie Switch, Ind.

Complainant is a corporation having its manufacturing plant at Prairie Switch on the main line of the Wabash Railroad, not far from the city of Fort Wayne. At Prairie Switch it owns a large deposit of humus, peat, or muck, which when dried and ground is used as a filler for commercial fertilizers. The complainant manufactures several grades of fertilizers ranging in price from \$17.50 to

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\$27 per ton, which are designed for various crops and soils, the essential ingredients being acid phosphate, muriate of potash, some ammonia-carrying compound, and a large proportion of the humus, or dried-peat filler, to enable the mixture to run readily through a drill. The proportions of the mixtures vary, and for some purposes tankage, ground bone, acidulated bone, and the like are added; but taking the average of all of the brands, outgoing tonnage exceeds incoming by at least three to one, and this increase in weight is due to the addition of the humus or dried-muck filler. While the dried humus is used as a filler the evidence indicates that it has fertilizing qualities in itself.

The petition asks in substance for a single rate applicable to phosphate rock, ground or crude, and acid phosphate; for lower rates on these commodities from the various points of origin named to Prairie Switch; for transit privileges at Prairie Switch to enable it to ship acid phosphate into that point and to obtain the benefit of the through rate on the outgoing movement of commercial fertilizer; for reparation on certain enumerated shipments from Baltimore and Buffalo; and concludes with a prayer for general relief. The defendants in their answers deny generally the broad allegations of the petition.

The claim that complainant should be allowed transit or milling privileges at Prairie Switch on acid phosphate is not tenable in view of the evidence that of the outgoing tonnage more than half is humus originating at that point.

Complainant compared the import rate from Baltimore to Prairie Switch on muriate of potash, which formerly was 11 cents per 100 pounds, with the rate on phosphate rock dissolved or acidulated, which was 18 cents. This rate on muriate of potash was a blanket rate extending from the Buffalo-Pittsburg line to Chicago, and as Prairie Switch was much nearer to the more distant boundary of the group, the comparisons made by the complainant between these rates, having regard to Prairie Switch alone, are not helpful to a determination of the reasonableness of the rate on acid phosphate. This apparent inequality, however, has been corrected since the hearing, and now the import rate on muriate of potash is 17 cents and the domestic rate on acid phosphate 18 cents. From Baltimore to Prairie Switch the distance is 656 miles, and the present rates yield the carriers a revenue of 5.48 mills per ton per mile on acid phosphate and a trifle less on imported potash. Nothing in the record indicates that the 18-cent rate on phosphate rock, crude, lump or ground, acidulated or dissolved in bulk, from Baltimore to Prairie Switch is unreasonable, discriminatory, or prejudicial to the complainant, the locality of Prairie Switch, or the commodity itself.



The present rates on the commodities named in the record are set forth in the following table:

*Rate on phosphate rock, etc.*

Commodity.	From—	To—	Miles.	Rate.	Rate per ton per mile.
				<i>Cents.</i>	<i>Mills.</i>
Muriate of potash (import) .....	Baltimore, Md. ....	Fort Wayne.....	648	17	5.24
Do.....	do.....	Prairie Switch.....	656	17	5.18
Muriate of potash (domestic) .....	do.....	Fort Wayne.....	648	17	5.24
Do.....	do.....	Prairie Switch.....	656	18	5.48
Phosphate rock, crude, lump or ground, acidulated or dissolved in bulk. ....	do.....	Fort Wayne.....	648	17	5.24
Do.....	do.....	Prairie Switch.....	656	18	5.48
Phosphate or rock, or phosphates for fertilizer. ....	Buffalo.....	Fort Wayne.....	399	12	6.01
Do.....	do.....	Prairie Switch.....	407	12½	6.08
Do.....	Washington Court House.....	Fort Wayne.....	199	9½	9.54
Do.....	do.....	Prairie Switch.....	207	10	9.08
Phosphate rock or acid phosphate. ....	Nashville, Tenn. ....	Fort Wayne.....	436	17½	8.02
Do.....	do.....	Prairie Switch.....	444	17½	7.88
Acid phosphate.....	Mount Pleasant.....	Fort Wayne.....	483	29	11.76
Do.....	do.....	Prairie Switch.....	501	29	11.57
Phosphate rock.....	do.....	Fort Wayne.....	483	\$4.24	8.80
Do.....	do.....	Prairie Switch.....	501	\$4.34	8.68
Do.....	do.....	do.....		\$3.45	6.06

a Per gross ton of 2,240 pounds.

b June 15, 1910.

Much stress was laid by the complainant upon the fact that while grain requires the very highest grade of railroad equipment for its safe transportation, the commodity rates assessed thereon by the carriers are ordinarily much lower than those applied on acid phosphate and phosphate rock, although both grain and phosphate fertilizer are classified as sixth class articles. The evidence is clear that so far as acid phosphate is concerned any equipment is sufficient that will protect that article from rain. The only result of acidulating the crude phosphate rock is to release and make soluble the phosphoric acid contained therein, and it is clear that exposure of acid phosphate or acidulated phosphate rock to rain would dissolve and remove the only element of value that it contains. The Commission frequently considers the character of equipment necessary for the transportation of various commodities, but it can not in this case go to the extent of considering the subordinate grades of equipment used in transportation.

The fertilizers made by complainant are shipped in bags and are for the most part without offensive odor. Acid phosphate of itself is a fertilizer and is ordinarily classed by the carriers with other fertilizing materials. It is not reasonable to expect the agents of the carriers to be able to distinguish between the harmless inodorous commercial fertilizers manufactured by this complainant and the more obnoxious, if not less valuable, compounds put upon the market by some of its competitors. Neither can a difference in rates be ordered by this Commission upon any such supposed distinction in fact.

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The evidence is far from convincing that acid phosphate, or acidulated phosphate rock, should in all cases take the same rates as untreated phosphate rock itself, crude or ground. The facts seem to be that the crude rock may be transported in open cars without injury, whereas the acidulated rock or acid phosphate must be protected from the weather or else deteriorate through the leaching out of its soluble phosphoric compounds. The tariffs on file show that the carriers sometimes class the crude and acidulated rock together and sometimes a higher rate is applied to the acid phosphate. The complainant has never used crude or unacidulated rock; acid phosphate only enters into its fertilizers, and the suggestions made at the hearing of the establishment of an acidulating plant at Prairie Switch are of very little weight.

The rates from Tennessee complained of were from Nashville and Mount Pleasant. In the case of *Darling & Co. v. B. & O. R. R. Co.*, 15 I. C. C. Rep., 79, we considered the rates on phosphate rock from the Mount Pleasant and Centerville districts in Tennessee to various points in Illinois, Indiana, Ohio, Michigan, New York, and Pennsylvania, via the Ohio River crossings, and established certain rates thereon for the future. The rates to Fort Wayne and Prairie Switch, Ind., were not involved, nor did we in that report consider the rates on acid phosphate.

The rate on phosphate rock and acid phosphate from Nashville to Prairie Switch is 17½ cents per 100 pounds, equivalent to \$3.92 per gross ton. This is a through rate made up of a rate of 7½ cents per 100 pounds from Nashville to the Ohio River when for beyond, and a rate of 10 cents from the Ohio River to destination. This rate should be adjusted by the defendants to bring it in alignment with the other rates from the Tennessee fields, but no order will be made with respect thereto, as there is not sufficient evidence in the case on which to make a finding. No joint rates on phosphate rock or acid phosphate from Nashville or on acid phosphate from Mount Pleasant have been established.

The rate on phosphate rock from Mount Pleasant to Prairie Switch has been \$4.34 per gross ton; on June 15, 1910, this rate will be changed to \$3.45 per gross ton.

The only rate on acid phosphate from Mount Pleasant is the combination of class rates based on the Ohio River. The record fails to show that acid phosphate is produced at Mount Pleasant and complainant failed to show that any of its shipments originated there. No order will be made with respect to rate from Mount Pleasant.

From Washington Court House, Ohio, to Prairie Switch the rate is 10 cents per 100 pounds for a distance slightly over 200 miles. We think this rate should not be higher than 9 cents on acid phosphate, which will yield a revenue per ton per mile of more than 8 mills.

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Complainant asks reparation on its shipments from Baltimore and from Buffalo specifically. The evidence fails to show damage of any kind to the complainant, and while we think the rate on acid phosphate from Buffalo to Prairie Switch should for the future be not higher than 12 cents per 100 pounds, we do not think the complainant is entitled to reparation on past shipments. The reasons for this conclusion are that the rate from Buffalo was the class rate applying not only to Prairie Switch but to all other places similarly situated, and as we have frequently said it does not follow that reparation will be allowed in all cases where we order a reduction in the rate.

Upon consideration of the facts in this case our conclusions are, and we so find, that the rate on acid phosphate in carloads from Buffalo, N. Y., to Prairie Switch, Ind., is unreasonable and excessive in and to the extent that it exceeds a rate of 12 cents per 100 pounds, which rate should not be exceeded in the future; and that the rate on acid phosphate in carloads from Washington Court House, Ohio, to Prairie Switch, Ind., is unreasonable and excessive in and to the extent that it exceeds a rate of 9 cents per 100 pounds, which rate should not be exceeded in the future.

Orders in accord herewith will be issued.

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No. 2397.

FRED'K DE BARY &amp; COMPANY

v.

LOUISIANA WESTERN RAILROAD COMPANY ET AL.

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Submitted January 19, 1910. Decided June 3, 1910.

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Damages for misrouting are based on the difference in the rate charged and the lower rate applicable via the route directed by the shipper or which the carriers should have used in the absence of any instruction, but to determine the damage all factors in the claimed route must be subject to the Commission's jurisdiction and filed in the manner prescribed by law. As part of the route in question in this case, under complainant's instructions, is from port to port, the rate for which is not filed with the Commission, the complaint must be dismissed.

No appearance for complainant.

*F. C. Dillard; J. F. Blair; Charles W. Bunn; Baker, Botts, Parker & Garwood; William F. Herrin; P. F. Dunne; and C. W. Durbrow* for defendants.

#### REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This complaint is one of misrouting and alleges damages in the amount of \$303.54 on a shipment of champagne from Antwerp, Belgium, to Seattle, Wash., on January 16, 1907. The claim was presented informally on September 17, 1908. Complainant directed that from New Orleans the shipment should move by rail to San Francisco, thence by water to Seattle, charges being applicable via that route, it is alleged, as follows: Antwerp to San Francisco, \$2 per 100 pounds; San Francisco drayage, 3 $\frac{1}{4}$  cents per 100 pounds; San Francisco to Seattle, \$3.50 per ton measurement, or a total on this shipment of \$1,033.66. The shipment moved from New Orleans via Louisiana Western Railroad, Galveston, Harrisburg & San Antonio Railway, Texas & New Orleans Railroad, and Morgan's Louisiana & Texas Railroad & Steamship Company to El Paso, Southern Pacific Company El Paso to Portland, Northern Pacific Railway to Seattle, the Southern Pacific Company through negligence having failed to deliver to the

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Pacific Coast Steamship Company at San Francisco, as directed by shipper. There is no question raised as to the route used from New Orleans to San Francisco. Aggregate charges of \$1,337.10 were collected, based on a rate of \$2.53, made up from Antwerp to San Francisco, \$2; San Francisco to Portland, 23 cents; Portland to Seattle, 30 cents; but defendants admit and our tariffs show that the proper charge via route of movement was \$2.45, as per Trans-Continental Freight Bureau tariff, I. C. C. No. 784, which names a rate of \$2 from Antwerp to Portland, and Northern Pacific, I. C. C. No. B-446, which carries a rate of 45 cents from Portland to Seattle. The resulting overcharge will be voluntarily corrected by defendants, and no order will therefore be issued.

Damages for misrouting are based on the difference in the rate charged and the lower rate applicable via the route directed by shipper or which the carriers should have used in the absence of any instructions, but to determine the damage all factors in the claimed route must be subject to the Commission's jurisdiction and filed in the manner prescribed by law. The San Francisco to Seattle rate of the Pacific Coast Steamship Company, which carrier under complainant's instructions should have participated in the haul, is a port-to-port rate, not filed with the Commission, and can not, therefore, serve as a measure of damages. Complainant was advised that this rate was not filed, and the suggestion was made that if the rate via route of movement was thought to be unreasonable, irrespective of misrouting, some evidence be submitted in support of that contention. No such evidence has been submitted, and both complainant and defendants have expressed willingness to have the case decided on the allegations in the pleadings, which, as suggested, are directed solely to misrouting. It follows that the complaint must be dismissed, and it will be so ordered.

18 I. C. C. Rep.

No. 3007.

W. G. HAGAR IRON COMPANY

v.

THE PENNSYLVANIA RAILROAD COMPANY ET AL.

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Submitted April 25, 1910. Decided June 3, 1910.

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Rates not on file with the Commission can not be used in constructing a through charge.

*W. E. Fisse* for complainant.

*Henry A. Scandrett* for Southern Pacific Company; Atlantic Steamship Lines; and Galveston, Harrisburg & San Antonio Railway Company.

#### REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

Under routing instructions given by itself the complainant caused to be shipped on a through bill of lading from Breckenridge, Pa., over the Pennsylvania Railroad, the Atlantic Steamship Company, and the Galveston, Harrisburg & San Antonio Railway through the ports of New York and Galveston to Houston, Tex., a carload of steel plates weighing 44,280 pounds, freight charges being assessed on the basis of a combination through rate of 59 cents per 100 pounds, constructed of a rate of 16 cents over the Pennsylvania Railroad to New York and a joint water-and-rail rate of 43 cents beyond. The complainant claims reparation based upon a combination rate of 32 cents, formed thus: Breckenridge to New York, 16 cents; port-to-port rate New York to Galveston, 10 cents; reconsignment charge at Galveston of 1 cent; and a local rate within the state of Texas from Galveston to Houston of 5 cents. The only rates on file with the Commission by which the through rate could possibly have been constructed were the factors actually used. The port-to-port rate New York to Galveston, the reconsignment charge at Galveston, and the intrastate rate Galveston to Houston were not on file, and for this reason, upon the authority of *Milburn Wagon Co. v. L. S. & M. S. Ry. Co.*, 18 I. C. C. Rep., 144, we hold that they were not factors to be used in constructing the through charge involved. It also appears that there was an all-rail rate from point of origin to destination of 52½ cents, and the complainant could have used this rate or transported the shipment in such a way as to obtain the advantage of the 32-cent combination rate asked to be applied. The complaint is dismissed.

No. 2796  
WILLIAM PLUMMER COMPANY  
v.  
NORTHERN PACIFIC RAILWAY COMPANY.

Submitted April 21, 1910. Decided June 2, 1910.

Rate on carload of sawdust from East Grand Forks, Minn., to Minnewaukan, N. Dak., found to be unreasonable to the extent that it exceeded rate on wood for fuel. Reparation awarded.

*Leonard Brisley* for complainant.

*Emerson Hadley* for defendant.

REPORT OF THE COMMISSION.

*COCKRELL, Commissioner:*

Complainant on February 1, 1909, shipped from East Grand Forks, Minn., to Minnewaukan, N. Dak., one carload of sawdust, weight 26,500 pounds, on which a commodity rate of 20 cents per 100 pounds, minimum 30,000 pounds, was charged. This rate is alleged to have been unreasonable in and to the extent that it exceeded the rate on wood for fuel of 8 cents per 100 pounds. Reparation is asked.

At the time of shipment sawdust was carried in the Western Classification under Class E, which made the rate between East Grand Forks and Minnewaukan 17 cents. This rate could not apply, however, as defendant's tariff provided for the application to sawdust of the specific commodity rate on lumber of 20 cents, which was collected. Subsequent to the hearing sawdust was withdrawn from the commodity tariff on lumber, and the rate now applicable is Class E, or 17 cents.

Complainant, in support of its contention that sawdust should take the same rate as wood for fuel, cited the tariffs of several carriers operating in Minnesota and North Dakota. Defendant alleges that very little sawdust moves for fuel, but that it generally moves for icing purposes and that the Class E rate is the ordinary classification.

From the tariffs on file we find that defendant has a distance rate on wood for fuel, which, for the distance of 304 miles between East Grand

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Forks and Minnewaukan, is 8 cents, minimum 40,000 pounds for cars 36 feet and under in length and 50,000 for cars over 36 feet in length; that, among other carriers, the Chicago, Milwaukee & St. Paul has a commodity rate on wood for fuel, shavings, and sawdust, which for the distance of 304 miles is  $9\frac{1}{2}$  cents, minimum for sawdust 20,000 pounds and for wood 24,000 pounds; that the Great Northern has a specific commodity rate on sawdust of  $8\frac{1}{2}$  cents, minimum weight 20,000 pounds, from St. Paul to Aberdeen, S. Dak., a distance of 310 miles, the lumber rate between said points being 20 cents, minimum 30,000 pounds, and that the Chicago & North Western, Chicago, Rock Island & Pacific, and Minneapolis & St. Louis railways file tariffs providing for fuel wood, and sawdust at the same rates. It further appears that the Western Classification rates both sawdust and fuel wood at Class E, with minimum on sawdust of 24,000 pounds.

Sawdust is a low-grade commodity, and it was stated at the hearing and not disputed that it was valued at about \$1.50 per ton, or about the cost of shoveling it into the car.

Under all the circumstances, our conclusions are and we so find that the rate exacted by defendant on the shipment in question was unreasonable in and to the extent that it exceeded the fuel-wood rate of 8 cents per 100 pounds; that complainant is entitled to reparation in the sum of \$38.80, with interest from February 5, 1909, and that defendant should establish and maintain for the future from East Grand Forks, Minn., to Minnewaukan, N. Dak., a rate on sawdust, minimum not to exceed 24,000 pounds, that is not higher than the rate contemporaneously in force on wood for fuel.

An order will be entered in accordance with these findings.

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No. 3056.

## COMMERCIAL CLUB OF OMAHA

v.

ANDERSON &amp; SALINE RIVER RAILWAY COMPANY ET AL.

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*Submitted May 12, 1910. Decided June 2, 1910.*

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In *Lincoln Commercial Club v. C., R. I. & P. Ry. Co.*, 13 I. C. C. Rep., 319, the Commission ordered that the rate on lumber from southern producing territory to Lincoln, Nebr., should not exceed that to Omaha; this order was complied with by raising the rate to Omaha from 23 cents to 25 cents and the rate to Lincoln from 24 cents to 25 cents. Within three months the rates to Omaha and to Lincoln were again raised to 26½ cents under the order entered in *Greater Des Moines Committee v. C. G. W. Ry. Co.*, 14 I. C. C. Rep., 294, forbidding the maintenance of a higher rate to Des Moines than to Omaha; *Held*, That the second advance was unreasonable and unjust; that the rate to Des Moines or to Lincoln should not exceed that to Omaha; that the rate to Omaha or to Des Moines should not for the future exceed 25 cents per 100 pounds, and that complainant's members are entitled to reparation.

*E. J. McVann* for complainant.

*Guernsey, Parker & Miller; E. G. Wylie; and F. W. Lehmann, jr.*, for the Greater Des Moines Committee (Incorporated), intervener.

*James C. Jeffery* for Arkansas & Louisiana Railway Company; Gurdon & Fort Smith Railway Company; Little Rock & Monroe Railway Company; Missouri Pacific Railway Company; New Orleans & Northwestern Railroad Company; Pine Bluff Arkansas River Railway Company; St. Louis, Iron Mountain & Southern Railway Company; St. Louis, Watkins & Gulf Railway Company; and Saginaw & Ouachita River Railroad Company.

*T. J. Norton and J. J. Coleman* for Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado & Santa Fe Railway Company.

*James E. Kelby and Hale Holden* for Chicago, Burlington & Quincy Railroad Company.

*M. L. Bell* for Chicago, Rock Island & Gulf Railway Company; Chicago, Rock Island & Pacific Railway Company; and Trinity & Brazos Valley Railway Company.

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*Sidney F. Andrews* for Illinois Central Railroad Company; Yazoo & Mississippi Valley Railroad Company; Gulf & Ship Island Railroad Company; and New Orleans & Northeastern Railroad Company.

*Frank H. Moore* for Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company; Arkansas Western Railway Company; Leesville, East & West Railway Company; Sabine & Northern Railroad Company; and Galveston, Beaumont & Northeastern Railway Company.

*R. S. Davis* for Louisiana & Pacific Railway Company; Sibley, Lake Bistenau & Southern Railway Company; and Woodworth & Louisiana Central Railway.

*W. R. Church* for Louisiana Central Railroad Company.

*J. D. Riddell* for Ouachita & Northwestern Railroad Company; Victoria, Fisher & Western Railroad Company; and Salem Winona & Southern Railroad Company.

*Edson Rich* for Union Pacific Railroad Company.

#### REPORT OF THE COMMISSION.

**CLARK, Commissioner:**

The carload rate of 26½ cents per 100 pounds on lumber and other forest products from producing territory in Arkansas, Louisiana, Mississippi, and Texas to Omaha and South Omaha, Nebr., and Council Bluffs, Iowa, is here attacked as unjust and unreasonable. Reparation is prayed for.

We shall discuss the rate to Omaha with the understanding that the term includes also South Omaha and Council Bluffs.

Prior to 1890, white pine from Wisconsin, Michigan, and Minnesota was used almost exclusively at Missouri River points. The first yellow pine came to Omaha from southeastern Missouri, and the rate thereon was 15 cents per 100 pounds, the same as that then applicable from Chicago on white pine. The rate from southern Arkansas and Louisiana was 22 cents, a differential of 7 cents above the Chicago, and the Grandin and Leeper, Mo., district rates. In December, 1899 the rates to Omaha and to Kansas City were made 23 cents.

Up to within the last year or two the movement of yellow pine has steadily increased until to-day it represents from 75 to 80 per cent of the total volume of lumber shipped into Omaha. Pacific coast lumber shipments are also increasing. The percentage of white pine from the north is now comparatively small. When yellow pine commenced to get a foothold a strong rivalry developed between the producers and carriers of white and yellow pine, resulting in rate controversies which were referred to arbitration in order to fix rates as between Chicago on the one hand, it being at that time the main distributing point for white pine, and the yellow-pine producing territory on the other.

The ordinary load for a car when the first yellow pine was shipped was from 25,000 to 30,000 pounds. The car capacity has constantly increased, and the average weight is now 50,000 to 55,000 pounds. There are few claims on account of loss, damage, or delay on lumber from southern markets.

As the production of yellow pine increased competition grew more acute, and that led to the establishment of rates that are blanketed over a territory beginning immediately north of the Red River and reaching to the Gulf of Mexico, extending 450 miles north and south and 500 or 600 miles east and west.

In *Lincoln Commercial Club v. C., R. I. & P. Ry. Co.*, 13 I. C. C. Rep., 319, we dealt with a complaint that the rate on lumber from most of the producing territory here involved to Lincoln, Nebr., was unjust and unreasonable in that it was higher than the rate to Omaha. We there held that the rate to Lincoln should not exceed the rate to Omaha, and the defendants complied with the order entered by advancing the Omaha rate from 23 cents to 25 cents and the Lincoln rate from 24 cents to 25 cents, effective June 1, 1908.

In *Greater Des Moines Committee v. C. G. W. Ry. Co.*, 14 I. C. C. Rep., 294, we held that the rate from most of this producing territory to Des Moines, Iowa, should not exceed the rate to Omaha, and the defendants there complied with the order by again advancing the rates to Omaha and Lincoln to 26½ cents, and reducing the rate to Des Moines from 27½ to 26½ cents, effective August 25, 1908.

These increases in the rate to Omaha are the subject of this complaint, and the Greater Des Moines Committee intervenes with the prayer that the holding that the rate to Des Moines shall not be higher than to Omaha be reaffirmed.

Formerly the rate to Kansas City, Chicago, and Omaha was the same, 22 cents. When Omaha was raised to 23 cents the same increase was made to Kansas City, and the present rate to Kansas City is 24 cents and to Chicago 26 cents. Complainant concedes the consistency of a lower rate to Kansas City than to Omaha. The rate on spruce, hemlock, and fir lumber from the Pacific coast to Omaha is 50 cents per 100 pounds. The rate on white pine from, for example, Hayward, Wis., to Omaha is 23 cents and from Spokane, Wash., is 47 cents.

There is a very large movement of grain out of Omaha to the south and complainant contends that this affords a very considerable southbound loading for cars that are used northbound for lumber. Defendant's testimony is to the effect that at least one-half of the requirement of lumber loading necessitates the handling of empty equipment.

The difference between the rate of 23 cents and of 26½ cents added \$1 per thousand to the price of common lumber—that is, The Southern

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Pine Manufacturers' Association, in order to avoid figuring half a cent counted the rate as 27 cents. All sales are made f. o. b. the mill.

Complainants refer to the allowances made by defendants to so-called tap lines, and suggest that the deduction of such allowances from the rate discloses the real rate that defendants are voluntarily accepting. While the question of tap-line allowances is a live and important one, we do not take it into consideration in this case. We adhere to the position taken in *Star Grain & Lumber Co. v. A., T. & S. F. Ry. Co.*, 17 I. C. C. Rep., 338.

We shall not prejudice any controversy over rates that may follow upon the withdrawal of these allowances by assuming that the present rates with the allowances discontinued will be unreasonable. But it seems well to suggest that the carriers and shippers ought promptly to confer, so that the entire situation may be readjusted on a basis that will eliminate the unlawful practices here referred to and will give the shippers transportation on a reasonable basis.

Defendants urge that when the forests of Arkansas and Louisiana were undeveloped it was necessary to do considerable missionary work in that territory and to make low rates without regard to distance in order to move the traffic. They suggest that a reduction in the rate to 23 cents would carry with it a reduction to Kansas City, and that if the orders of the Commission prevail as in the *Des Moines case*, Des Moines and Lincoln rates would also have to be correspondingly reduced. Reference was made to a general increase in the cost of labor and of all material necessary to the operation of a railroad.

Nothing has been developed in this case which persuades us to recede from the positions taken in the *Lincoln* and *Des Moines cases*. It was found in the former of those cases, as has been shown in this, that formerly the lumber supply came from the northwest, and that at present 80 per cent of lumber comes from the south, 15 per cent from the Pacific coast and other far-western forests, and 5 per cent from the northwest. The competition of white pine has largely disappeared. The development of the yellow-pine country probably required rates as low as those from the northwest on white pine, and it may be that those rates were lower than would have been justified in the absence of competition from developed areas.

In the *Des Moines case* it appeared that for twenty years Omaha and Des Moines enjoyed the same rate and that in eight years the rate to Omaha had been increased one cent and that to Des Moines five and one-half cents.

Defendants argue that the increases in the Omaha rate were part of a general plan to advance the rates from the southern producing territory to a normal basis as the competition of white pine disappeared. We can not view these increases, particularly the second one, in that light. As has been seen, the rate to Omaha was 22 cents

prior to December 15, 1899. It was then advanced one cent and remained at 23 cents until June 1, 1908, when it was advanced under the Commission's order that the rate to Lincoln should not exceed that to Omaha. It was again advanced on August 25, 1908, or within three months, under the Commission's order that the rate to Des Moines should not exceed that to Omaha, and the rate to Lincoln was also again advanced. In order to hold up through rates resulting from this advance, local factors in the St. Louis combination had to be advanced so that the combination would be as high as the through rate. Obviously, defendants were satisfied with the 23-cent rate to Omaha and did not find justification for increasing it because of diminishing competition of white pine until it was no longer possible to maintain a higher rate to Lincoln. Apparently they would have been content with the 25-cent rate to Omaha and to Lincoln, but rather than to reduce the Des Moines rate to 25 cents they again advanced both the Omaha and Lincoln rates.

It appears that there has been a reduction in the Nebraska state rates and that to many Nebraska points the rates make in combination on Omaha. For this reason defendants argue that the increases in the rates to Omaha have been neutralized by the reduction in the state rates. We are here dealing with the rate to Omaha and not directly with the combination rates to Nebraska points. The measure of the local state rates from Omaha is of no interest to many of the defendants, as they have no lines in Nebraska. In fact, but few of them reach Omaha. If the state rates have been made too low, that does not, under the facts now before us, warrant an interstate rate to Omaha higher than would otherwise be reasonable. If the state rates have been fixed at an unduly or unreasonably low figure there is a forum in which to test that question, and at least until such test has been invoked it can not be recognized as proper to "neutralize" the reduction in state rates by increases in interstate rates.

Defendants contend that the rate of 26½ cents to Omaha is shown to be reasonable by the facts that the traffic moves freely and that the lumber business in Omaha has greatly increased. They cite the rule laid down in *Interstate Commerce Commission v. C. G. W. Ry. Co.*, 209 U. S., 108, that "The mere fact that a rate has been raised carries with it no presumption that it was not rightfully done." We accept that theory as sound, *Memphis Cotton Oil Co. v. I. C. R. R. Co.*, 17 I. C. C. Rep., 313, but we are not, as at present advised, ready to accept the theory that rates may lawfully and reasonably be increased by progressive advances as long as the traffic moves freely and until the highest point under which the traffic will move freely is reached. Some traffic must move, and reasonably freely, up to the point where the rate becomes prohibitive.

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Emphasis is laid upon the rate per ton per mile yielded by the present rate. As has been stated, this rate applies from all points in a territory some 450 by 600 miles in extent. In *Chicago Lumber & Coal Co. v. T. S. E. Ry. Co.*, 16 I. C. C. Rep., 323, it was said:

Blanket or group rates in many cases, especially with reference to particular commodities, are of great advantage to the public without serious injustice to any interest, though there is of necessity more or less disregard of distance and varying degrees of inequality.

The rate per ton per mile would be affected by the distances between certain points of origin and destination. The best that could be done would be to strike an average, and that average would be imperceptibly affected by the change which we think should be made.

We are not prepared to condemn the advances to Lincoln and Omaha under our order in the *Lincoln case*, but from a review of the three cases we find no justification for an increase above 25 cents per 100 pounds.

We are of the opinion, therefore, that the rate on lumber and other forest products grouped therewith from producing territory in Arkansas, Louisiana, Mississippi, and Texas to Omaha and South Omaha, Nebr., and to Council Bluffs and Des Moines, Iowa, is unjust and unreasonable to the extent that it exceeds 25 cents per 100 pounds, and that that rate should not be exceeded for the future. We are also of the opinion that for the future the rate to Des Moines should not exceed the rate to Omaha. There is no indication that the relation established by the Commission between Lincoln and Omaha should be disturbed.

Complainant asks reparation on behalf of certain of its members specified in Exhibit A attached to its petition.

In *Kindelon v. Southern Pacific Co.*, 17 I. C. C. Rep., 251, it was said:

The shipper who has been charged an unlawful rate and who is the owner of goods transported is entitled to repayment without the imposition of the impossible task upon the Commission of ascertaining the ultimate profits accruing from the business of the shipper. Moreover, the owner of the freight who has been required to pay an unreasonable rate is entitled, upon proper complaint and showing, to reparation irrespective of the profits accruing from his business.

We are of the opinion that complainant's members are entitled to reparation to the extent of the sums paid in excess of 25 cents per 100 pounds on all shipments made within the statute of limitations.

Complainant may submit to defendants detailed statements of the shipments made via their respective lines under the 26½-cent rate. Such statements, when verified by defendants, may be submitted to the Commission and orders will be issued authorizing payment. If the parties can not agree as to the amount due, the question may be brought to the Commission for adjudication.

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No. 2348.

HENDERSON ELEVATOR COMPANY

v

LOUISVILLE &amp; NASHVILLE RAILROAD COMPANY.

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*Submitted December 10, 1909. Decided June 3, 1910.*

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Upon the facts disclosed by the record; *Held*, That defendant's failure to establish a proportional rate from Enfield, Ill., to Henderson, Ky., upon grain originating at points beyond Enfield and reshipped from Henderson to southeastern destinations, while maintaining such proportional rates, less than its local rates, from all junction points on its St. Louis division other than Enfield, unduly discriminated against traffic which moved via Enfield. Reparation awarded.

*C. M. Bullitt* for complainant.

*Wm. G. Dearing* for defendant.

#### REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

A formal complaint in this proceeding was filed April 13, 1909, and the facts had been presented to us informally prior to that date. During May and June, 1907, defendant transported for complainant from Enfield, Ill., to Henderson, Ky., 27 carloads of ear corn, weighing in the aggregate 1,281,055 pounds, which had originated at points on connecting lines beyond Enfield, and were subsequently reshipped by complainant from Henderson to points in southeastern territory and the Carolinas. For the carriage from Enfield to Henderson the rate exacted, in accordance with defendant's tariff, was 7.08 cents per 100 pounds. At the same time defendant published, for transportation to Henderson from all junction points on its St. Louis division other than Enfield of grain originating beyond said junction points and reshipped to southeastern points, a proportional rate of 3 cents per 100 pounds. Complainant alleges and defendant admits that failure to establish the 3-cent proportional from Enfield resulted in undue discrimination against and excessive charges upon grain transported to Henderson through Enfield. It appears that formerly there were through rates via Enfield from Illinois stations to Henderson and

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Evansville, but they were canceled September 1, 1905. The carriage of grain via the other junctions on the St. Louis division was covered by proportional rates, and it was defendant's intention to provide for the movement via Enfield in a similar manner; but its failure to do so was not brought to the attention of its traffic officials until, as a result of the charges upon the traffic here in question, complainant filed a claim for overcharge. By tariff effective February 8, 1908, the 3-cent proportional was made applicable to corn moving via Enfield.

The record in this case discloses a situation similar in all material respects to that presented in *Henderson Elevator Co. v. I. C. R. R. Co.*, 17 I. C. C. Rep., 573. We find that the rate of 7.08 cents, charged upon the shipments mentioned in this proceeding, was unduly discriminatory and that a reasonable rate would not have exceeded 3 cents. An order will be entered awarding reparation to complainant in the sum of \$522.54, with interest from December 31, 1907, and requiring defendant to maintain for a period of two years from the date hereof a proportional rate for the transportation from Enfield to Henderson of grain originating beyond Enfield and reshipped from Henderson to southeastern destinations not in excess of the rates simultaneously exacted for similar service in respect of grain transported by it to Henderson from other junction points on its St. Louis division.

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No. 2882.

ALFRED OWEN DAVIES

v.

LOUISVILLE &amp; NASHVILLE RAILROAD COMPANY ET AL.

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*Submitted April 25, 1910. Decided June 3, 1910.*

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1. On the whole record the Commission is unable to find that defendants have charged more for loading and furnishing material and placing dunnage on shipments of fruits and vegetables from Gibson and Humboldt, Tenn., to Chicago, Ill., than the cost of the service, and it is therefore constrained to hold that the charge is not unreasonable.
2. Complainant's contention that it is the duty of defendants to load, strip, and brace carload shipments of fruits and vegetables at their own expense, for the reason that this service is included in the carload rate, is not tenable because the tariffs of the principal defendant provide that shippers shall load and unload carload shipments. The service of loading, furnishing material, and placing in the cars is an additional service over and above the transportation for which carriers are entitled to receive reasonable compensation.
3. There is no allegation in the complaint that challenges the reasonableness of either the carload or less-than-carload rates on shipments of tomatoes from Gibson and Humboldt to Chicago, except as the claim is made that by adding the loading and bracing charges to carload rates a higher total charge results than would be imposed on the same amount of freight transported at less-than-carload rates. No evidence was submitted with respect to the reasonableness of the rates on either of them, and no finding can therefore properly be made with respect thereto.

*Alfred Owen Davies* for complainant in person.

*Perkins Baxter* for Louisville & Nashville Railroad Company.

*B. H. Stanage* for Chicago & Eastern Illinois Railroad Company.

#### REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

This is a complaint by the representative of a number of Chicago merchants that charges by the Louisville & Nashville for loading, stripping, and bracing certain carloads of fruits and vegetables shipped in June and July, 1908, from Gibson and Humboldt, Tenn., to Chicago, Ill., were unreasonable, discriminatory, and in violation of the published tariffs of that carrier.

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Prior to 1907 fruits and vegetables were transported for the most part from the Tennessee points in question over the Louisville & Nashville by the Armour Car Lines.

Effective August 27, 1906, a tariff of the Louisville & Nashville provided:

When L. & N. or other foreign-line refrigerator cars are used for transporting carload shipments of tomatoes and other vegetables from Memphis line station at request of shippers, agents must call their attention to the following rule: The icing charge at Humboldt is \$20 per car; charge for stripping and bracing \$4 per car, varying according to the size of the car; unless otherwise specified in classification, icing charges include charges for stripping and bracing, and charges on carload shipments must be paid by shippers or consignees.

Effective June 17, 1907, the following was published in the tariffs of the Louisville & Nashville:

If the shipper so desires, this company will, at his expense, load the fruits and vegetables and supply and place the dunnage and braces, assessing therefor the actual cost of labor and material and allow such expense to follow on the billing for collection at destination. In this event the cost of the service will be entered in the waybill and the bill of lading as advance charges described: Loading, dunnage, and bracing \$——.

April 13, 1908, the above provision was superseded by the following:

If the shipper so desires, this company will, at his expense, load fruits and vegetables and supply and place the dunnage and braces, assessing therefor the actual cost of labor and material. Such expense to be paid by the shipper at the time the service is performed and before the car is forwarded.

July 4, 1908, the tariff was amended, making changes in the above rule as follows:

If the shipper so desires, this company will, at his expense, load fruits and vegetables and supply and place the dunnage and braces, assessing therefor the actual cost of labor and material and if requested allow such expense to follow on the billing for collection at destination. In this event the cost of the service will be entered in the waybill and the bill of lading as advance charges described: Loading, dunnage, and bracing \$——. If such request is not made and the expense is to be borne by the shipper he must pay for same at the time the service is performed and before the car is forwarded.

All of these issues provide that—

charges for icing or reicing do not include loading or unloading of the fruits and vegetables or supplying or placing of dunnage and braces or any part of the transportation service.

It was the practice of the Armour Car Lines at that time, and is its practice now, to load fruits and vegetables and furnish and place dunnage, etc. Charges for this service during the period in question seem to have been included in the icing charges which followed shipments and were paid by consignees. So far as this record discloses,

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shippers from Gibson and Humboldt were not required, for a number of years prior to 1908, to pay in advance for loading and bracing shipments.

The record shows that when the provisions of the Louisville & Nashville tariff of April 23, 1908, above quoted, became operative shippers at Gibson and Humboldt protested against payment in advance for the service in question. It is stated by officials of the Louisville & Nashville that these shippers refused to ship via that line so long as charges for loading and bracing shipments were required to be paid before forwarding, but sent their shipments from Humboldt by the Illinois Central, or from Milan, Tenn., by the Mobile & Ohio, over which lines advance charges were not imposed on shippers for loading and bracing carload shipments. Whatever charges were made for this service were collected of the consignees on delivery. The evidence shows that while the provision requiring shippers to pay in advance was in effect, certain shipments were sent forward with charges to be paid by the consignees. This was in direct violation of the tariff, but the fact has no bearing upon the reasonableness of the charges, which is the question now to be considered.

Charges exacted by defendants for loading and unloading and furnishing material are shown to average as follows: Tomatoes, \$10 per car; strawberries, \$8 per car; cabbage, \$7 per car.

It is asserted by the Louisville & Nashville that these charges do not cover the actual expense and they much prefer to have shippers load and brace their own shipments. It is further asserted that during the year 1909 there was an average loss on this service of about 80 cents per car on all shipments from Gibson and Humboldt, and the evidence shows that the Louisville & Nashville loads and braces shipments at less cost than would be incurred if the service were performed by the shippers themselves. It appears to be rather difficult for shippers to secure competent labor to load and brace cars during the shipping season. The custom is for the carriers to load all fruits and vegetables at Tennessee points and this is acquiesced in by shippers. Complainant, however, contends that the charge is unreasonable when compared with the \$2.50 charged by the Illinois Central for furnishing material for bracing carload shipments from Humboldt. It is to be noted that the charge by that line does not include loading the traffic and placing braces. What the charge of the Armour Car Lines is at Milan for loading and bracing shipments does not appear.

On the whole record we are unable to find that the defendants have charged more for loading and furnishing material and placing dunnage on shipments of fruits and vegetables than the cost of the service, and we are therefore constrained to hold that the charge is not unreasonable.

It is further contended by complainant that it is the duty of defendants to load, strip, and brace carload shipments at their own expense, for the reason that this service is included in the carload rate. This contention is not tenable for the reason that the tariffs of the Louisville & Nashville provide that shippers shall load and unload carload shipments. The service of loading, furnishing material, and placing in the cars is an additional service over and above the transportation for which carriers are entitled to receive reasonable compensation.

It is also contended by complainant that when the charge for loading carload shipments and furnishing labor and material for dunnage and placing same is added to the carload rate on shipments of tomatoes from Gibson and Humboldt, the result is a total charge on carload shipments of more than would be imposed for transporting the same weight of less-than-carload shipments.

The following table shows the carload and less-than-carload rates in cents per 100 pounds from Gibson and Humboldt to Chicago on certain commodities which are selected as illustrative:

*Rates from Chicago, in cents per 100 pounds.*

Commodity.	From Gibson.		From Humboldt.	
	C. L.	L. C. L.	C. L.	L. C. L.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Tomatoes.....	42.3	47	39.6	44
Cabbage.....	35	39	33	38
Strawberries.....	45	60	45	60
Potatoes.....	30	39	30	38

It is to be observed that the carload rate on tomatoes from Humboldt to Chicago is 39.6 cents per 100 pounds, minimum 20,000 pounds, and the less-than-carload rate 44 cents per 100 pounds. A charge of \$10 per car for loading, bracing, etc., carload shipments of tomatoes makes the total charge more than would result from the application of tariff rates to the same weight in less-than-carload shipments. The record does not show that this anomalous adjustment is applicable to any large number of commodities. Under the circumstances above shown it appears that the spread between the carload and less-than-carload rates on tomatoes between Humboldt and Chicago is out of line, and there is nothing in the record which justifies such an adjustment. The Louisville & Nashville asserts that competition does not permit it to put in different rates than are now effective at Gibson and Humboldt. There is no competition at Gibson, but there may be at Humboldt, as the Illinois Central reaches that point. We are not further informed as to the reasons for the peculiar adjustment of these rates.

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There is no allegation in the complaint that challenges the reasonableness of either the carload or the less-than-carload rates except as the claim is made that by adding the loading and bracing charges to carload rates a higher total charge results than would be imposed on the same amount of freight transported at less-than-carload rates. No evidence was submitted with respect to the reasonableness of the rates on either of them, and no finding can therefore properly be made with respect thereto.

It is suggested to the Louisville & Nashville, however, that there appears to be no justification for the existing relation of carload and less-than-carload rates on shipments of tomatoes from Humboldt to Chicago, and this applies also to other fruits and vegetables which have similar rate relations. In the case of less-than-carload shipments the carriers load and brace the commodity without additional charge.

Under these circumstances no order can properly be made, and the complaint must be dismissed.

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No. 2986.

SUNDERLAND BROTHERS COMPANY

v.

ST. LOUIS &amp; SAN FRANCISCO RAILROAD COMPANY ET AL.

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Submitted May 25, 1910. Decided June 3, 1910.

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Minimum weight assessed on complainant's shipments of lime from Ash Grove, Mo., to Pine Bluffs and Laramie, Wyo., found excessive, and lower minimum weight prescribed for the future. Reparation awarded.

*C. E. Childe* for complainant.

*Fred. H. Wood* for St. Louis & San Francisco Railroad Company.

*Edson Rich* for Union Pacific Railroad Company.

#### REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

Complainant on April 17 and September 5, 1909, respectively, shipped by the lines of defendants from Ash Grove, Mo., to Pine Bluffs, Wyo., a carload of lime. The earlier shipment weighed 24,000 pounds and the later 30,000 pounds. Defendants collected 34 cents per 100 pounds on the first car and 29 cents on the second. They concede that any rate in excess of 27 cents per 100 pounds, 30,000 pounds minimum, was excessive and not in accordance with published tariffs and state that they will make refund of an overcharge of \$6.80. It is denied by them that the rate of 27 cents with 30,000 pounds minimum is unreasonable. In Amendment No. 1 to this complaint it is alleged that complainant on June 23, 1908, shipped from Ash Grove, Mo., to Laramie, Wyo., a carload of lime. The weight of this shipment was 24,000 pounds and the charges collected were \$121.80, based on a combination rate of 27 cents, Ash Grove to Cheyenne, Wyo., 30,000 pounds minimum, and 17 cents, Cheyenne to Laramie, 24,000 pounds minimum.

It is alleged by complainant that any charge on shipments of lime from Ash Grove to Pine Bluffs in excess of 27 cents per 100 pounds, 24,000 pounds minimum, and any charge in excess of 44 cents per 100 pounds, 24,000 pounds minimum, on shipments from Ash Grove to Laramie, is unreasonable and discriminatory. Reparation is asked.

Complainant does not attack the rates now in effect, and the only question presented is whether the minimum of 30,000 pounds on shipments of lime from Ash Grove to Pine Bluffs and Laramie is unreasonable and discriminatory.

It is asserted by complainant that lime is a perishable commodity and must be handled in comparatively small quantities; and it appears that carriers generally have recognized the necessity for a low minimum on this article. The established minimum from and to practically all parts of the country is 24,000 pounds, and that minimum is applied from Ash Grove and other lime-producing points on the St. Louis & San Francisco to practically all points to which through rates are published by that company, except Colorado common points. Lime is shipped in barrels, and purchasers, especially in small towns, usually buy 120 barrels at a time, or about 24,000 pounds.

It is further asserted by complainant that its principal competition on shipments to Pine Bluffs is with kilns located on the Mississippi River at Quincy, Ill., Hannibal, Mo., etc. The same rates are published from the Mississippi River points as from Ash Grove, and the minimum applicable is 24,000 pounds. The minimum from the Mississippi River points to Laramie is likewise 24,000 pounds. It is also pointed out that defendants apply 24,000 pounds minimum on through shipments from Ash Grove to Rock Springs, Wyo., 260 miles west of Laramie.

Defendants contend that Pine Bluffs is a Colorado common point; that the minimum applicable to those points including Cheyenne is 30,000 pounds; and that the application of the 24,000-pound minimum to Pine Bluffs would break down the common-point adjustment. Rates on lime to Colorado common points are 22 cents per 100 pounds, 40,000 pounds minimum, and 27 cents, 30,000 pounds minimum. Defendants assert that these rates were established and maintained because as a rule Colorado common points are large consumers of lime and also distributing points for a considerable extent of territory. Pine Bluffs and Laramie are not distributing points.

Pine Bluffs was not made a Colorado common point until 1909 and does not now take Colorado common-point rates on cement or lime from Mississippi River points; and it does not appear to us that application of the 24,000-pound minimum to Pine Bluffs would necessarily affect the minimum applicable on shipments of lime to Colorado common points.

Considering the fact that the tariffs of the St. Louis & San Francisco show that to practically all points to which through rates are provided a 24,000-pound minimum is applied and that points with

which Ash Grove shipments must compete have that minimum, we are of opinion and find that the application of the 30,000-pound minimum on through shipments from Ash Grove to Pine Bluffs and Laramie is unreasonable to the extent that it exceeds 24,000 pounds, and that complainant is entitled to reparation from these defendants on one carload shipment from Ash Grove to Pine Bluffs, shown in the original complaint, in the sum of \$16.20, with interest from November 1, 1909; and on the shipment from Ash Grove to Laramie, shown in Amendment No. 1, in the sum of \$16.20, with interest from August 1, 1908. The defendants will be required to maintain on through carload shipments of lime from and to the points named a minimum not in excess of 24,000 pounds.

An order will be entered accordingly.

18 L. C. C. Rep.



No. 2755.  
WILBURINE OIL WORKS, LIMITED,  
v.  
PENNSYLVANIA RAILROAD COMPANY ET AL.

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*Submitted May 10, 1910. Decided June 3, 1910.*

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Reparation for misrouting where shipper gives instructions to forward the goods via the route taken, denied.

*Hinckley, Alexander & Clark* for complainant.

*Henry Wolf Bikle* for Pennsylvania Railroad Company.

*T. H. Burgess* for Erie Railroad Company.

*Douglas Swift* for Delaware, Lackawanna & Western Railroad Company.

REPORT OF THE COMMISSION.

KNAPP, *Chairman*:

Between August 21 and October 5, 1907, the Valvoline Oil Company, of Edgewater, N. J., shipped to the complainant corporation, operating a distillery at Struthers, Pa., 26 carloads of redistilled press oil, weighing 1,121,789 pounds, on which a rate of 22 cents, or a total charge of \$2,467.91, was assessed. Complainant alleges that the rate should not have exceeded 16½ cents, which was the rate from Struthers to Edgewater, and asks reparation in the sum of \$616.96. Formal complaint was filed August 11, 1909.

Bills of lading showing the routing via the above-named lines were made out by the Valvoline Oil Company and handed to the agent of the New York, Susquehanna & Western Railroad at Edgewater, who advised the shipping clerk presenting the bills of lading that no joint rate was in effect between Edgewater and Struthers via the route specified, and that there was in effect a joint rate of 16½ cents via the New York, Susquehanna & Western, Erie, and Pennsylvania railroads. Nevertheless the routing was not changed and the shipments moved on a local rate of 4 cents per 100 pounds from Edgewater to Bergen Junction, and from that point to Struthers on a joint rate of 18 cents made by the Delaware, Lackawanna & Western and the Pennsylvania railroads. The fact that the eastbound rate is lower

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than the westbound rate does not prove that the latter is unreasonable. *Weil v. P. R. R. Co.*, 11 I. C. C. Rep., 627.

There is no regular movement of oil from coast points to the west, and the shipments above referred to were made at the time the Valvoline Oil Works were burned and the oil shipped back to Struthers for redistillation. On February 6, 1908, about twenty months after these shipments moved, the rate of 16½ cents was voluntarily made from Edgewater to Struthers via the New York, Susquehanna & Western and the Pennsylvania railroads, and on April 12, 1909, this same rate was published via the defendant lines.

This case is governed by *Poor Grain Co. v. C., B. & Q. Ry. Co.*, 12 I. C. C. Rep., 469, reaffirmed in *Donahue v. C., M. & St. P. Ry. Co.*, 18 I. C. C. Rep., 92, in which the Commission held that where a shipper gives specific instructions to forward his goods via a particular route, the carrier is relieved of the duty of ascertaining whether or not the goods could be forwarded via another route at a lower rate.

The complaint will accordingly be dismissed.

18 I. C. C. Rep.

No. 2779.

STACY MERCANTILE COMPANY

v.

MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY  
COMPANY ET AL.

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*Submitted April 21, 1910. Decided June 3, 1910.*

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Reparation awarded because of unlawful discrimination in rates against complainant's shipment of apples from points in Washington to points in North Dakota, as at the time of shipment a lower rate was in effect from other points similarly situated in Washington.

*Leonard Brisley* for complainant.

*A. H. Bright* for Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Canadian Pacific Railway Company; and Spokane International Railway Company.

*L. T. Wilcox* for Oregon Railroad & Navigation Company.

#### REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

Complaint was filed on August 18, 1909, and presents a claim for reparation of \$225.30 on account of the shipment in October, 1907, of five carloads of apples as follows:

Two cars weighing 30,000 pounds each from Farmington, Wash., to Kenmare, N. Dak.; one car, weighing 30,000 pounds from Pullman, Wash., to Kenmare; one car, weighing 30,000 pounds, from Pullman to Valley City, N. Dak.; and one car, weighing 30,200 pounds, from Zumwalt, Wash., to Kenmare.

The shipments all moved from the points of origin on the Oregon Railroad & Navigation Company to Spokane; the Spokane International to Kingsgate; the Canadian Pacific from Kingsgate to Portal; and from Portal to destinations over the Minneapolis, St. Paul & Sault Ste. Marie Railway, hereinafter designated as the "Soo" line. The rate charged and collected was 75 cents per 100 pounds, amounting to \$225 upon each of the cars except the one from Zumwalt, upon which the total charge was \$226.50.

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Complainant contends that the rate charged was unreasonable and that 60 cents would have been a reasonable rate. The facts in this case are that at the time the shipments moved the published tariff rate between the points of origin and of destination was \$1 per 100 pounds. There was in effect at the same time from the points of origin over this route to Minneapolis and St. Paul a rate of 75 cents and these points of destination were intermediate, but the 75-cent rate did not apply to such intermediate points. However, the 75-cent rate was charged and collected through some error on the part of the defendants. There has, therefore, been an undercharge on these shipments of 25 cents per 100 pounds.

In May, 1907, the carriers constituting this route agreed upon a 60-cent rate to be applied to St. Paul and Minneapolis and intermediate points, and made effective that rate to the cities named, but owing to delays incident to lining up the tariffs the specific rates from those points of origin here involved, contiguous to Spokane, were not lined up until December, 1907, and the shipments moved in October, 1907. The representative of the Oregon Railroad & Navigation Company at the hearing stated that if the tariffs could have been promptly lined up after the agreement had been made with the Spokane International and the Canadian Pacific Railways, undoubtedly the 60-cent rate would have been in effect in October, 1907, and all the defendants agreed that the 60-cent rate should have been applied on these shipments and that failure to apply it constituted an unlawful discrimination. They are willing that reparation should be made on the basis of 60 cents. On September 15, 1908, the rates on apples from the territory contiguous to Spokane to the destinations here involved, and territory east, were raised to 75 cents, which is still effective.

Complainant expresses a willingness to accept reparation on the basis of the 60-cent rate and does not ask that the rate be fixed for the future at that figure or at any figure. No witnesses were sworn in the case and there was no contention that the rate itself was unreasonable, the contention being that it was a discrimination not to have applied as low a rate between these points, as was applied to other points similarly situated. At the time these shipments moved there was a 60-cent rate in effect via other lines from stations contiguous to Spokane, in the apple-growing country, to destinations similarly situated in North Dakota. The Oregon Railroad & Navigation Company had a joint rate of 60 cents at this time via the Great Northern and the Oregon Short Line from this apple section to destinations in North Dakota.

This case is similar to that of *Gamble-Robinson Commission Co. v. N. P. Ry. Co.*, 14 I. C. C. Rep., 523, where the Commission held that 18 I. C. C. Rep.

the \$1 rate from Nooksack, Wash., to Minneapolis, Minn., was an unlawful discrimination when there was in effect an 80-cent rate from other points similarly situated in Washington, and reparation was awarded accordingly, nor was any opinion expressed in that case as to the reasonableness of the rate of \$1. In this case we hold that complainant was subjected to unlawful discrimination and was damaged in the sum of \$225.30, and reparation is awarded in that sum, with interest from November 30, 1907.

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No. 2957.  
GEORGE BORGFELDT & COMPANY  
v.  
SOUTHERN PACIFIC COMPANY ET AL.

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*Submitted March 1, 1910. Decided June 3, 1910.*

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Shipments forwarded from Hamburg on through bills of lading prepaid to California terminals. The ship in which the consignments were loaded sailed from Hamburg July 4, 1908. When the goods arrived in New Orleans the through rate had been canceled, leaving in effect a rate from New Orleans to San Francisco higher than the proportion of the through rate formerly assessed by the defendants. Defendants collected from complainant the additional charges, although the delay in the ocean transportation was due to a breakdown of the machinery of their own ocean connection; *Held*, That under rule No. 111 of Conference Rulings Bulletin No. 4, the complaint must be dismissed.

*S. Pierce* for complainant.

*F. C. Dillard* and *J. P. Blair* for Morgan's Louisiana & Texas Railroad & Steamship Company.

*Baker, Botts, Parker & Garwood* for Texas & New Orleans Railroad Company and Galveston, Harrisburg & San Antonio Railway Company.

*F. C. Dillard, P. F. Dunne* and *C. W. Durbrow* for Southern Pacific Company.

*William F. Herrin* and *Gordon M. Buck* for all defendants.

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## REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

This is a complaint that by reason of the cancellation of the joint through rates from ports in foreign countries to California terminals the complainant was overcharged \$451.08. Under the dates July 2, 3, and 4, 1908, ten through bills of lading were issued to complainant at Hamburg by the agent of the Southern Pacific Company, covering 415 packages containing various commodities, and \$2,650.35 was prepaid for the transportation of such packages to California terminal points, the particular destination of each package to be designated by complainant on or before arrival of the shipments at New Orleans. The steamer sailed from Hamburg July 4, 1908, but owing to an accident to its machinery did not arrive in New Orleans until the first or second day of August, 1908.

Prior to August 1, 1908, joint through rates from foreign ports to points of destination in the United States were in effect via the route these shipments moved; on that date, however, the tariff carrying such rates was canceled and in lieu thereof rates became effective from the ports of entry in this country to the points of destination. The carriers assessed the additional charges arising on these shipments under the tariff then in effect and complainant was required to pay an additional amount of \$451.08, for which sum it asks reparation.

We adhere to our former rulings: That being without jurisdiction over ocean carriers from ports in foreign countries to ports of entry in this country, we can not recognize joint through rates from such ports beyond the seas to points of ultimate destination within the United States.

A similar question to the one now raised was presented informally November 12, 1908, and our holding with respect thereto will be found in Conference Rulings Bulletin No. 4, page 30, as Ruling No. 111. At that time we said:

*November 12, 1908.*

**CHANGE OF RATE WHILE SHIPMENT WAS ON THE OCEAN.**—A shipment of linoleum left Hamburg on July 4, at which time there was in effect a published through rate to San Francisco via New Orleans of \$1.10. When the shipment reached New Orleans the through rate had been canceled, leaving in effect a local rate from New Orleans to San Francisco of 90 cents. Upon application for permission to refund down to the \$1.10 through rate; *Held*, That the application must be denied.

There are no facts shown now to justify a different conclusion from that announced in Rule No. 111, and it follows that the case must be dismissed. It will be so ordered.

18 L. C. C. Rep.

No. 2815.  
JOHN J. SERRY  
*v.*  
SOUTHERN PACIFIC COMPANY ET AL.

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*Submitted January 19, 1910. Decided June 3, 1910.*

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Reparation awarded on a carload of lumber shipped from Oregon City, Oreg., to Cripple Creek, Colo.

*McCorkle & McCorkle* for complainant.

*E. N. Clark* for Southern Pacific Company, Oregon Railroad & Navigation Company, Oregon Short Line Railroad Company, and Denver & Rio Grande Railroad Company.

*Schuyler & Schuyler* and *R. S. Ellison* for Colorado Springs & Cripple Creek District Railway Company.

REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

At the instance of complainant, a lumber dealer of Cañon City, Colo., the defendant carriers in April, 1908, transported a carload of fir lumber weighing 65,400 pounds from Oregon City, Oreg., to Cripple Creek, Colo., on which freight charges were paid by complainant in the sum of \$451.26, besides an item of \$4 for demurrage accruing at Cripple Creek. The through rate applied was 69 cents per 100 pounds, based upon a joint rate of 50 cents to Colorado Springs and a local of 19 cents beyond. For reasons hereinafter stated, complainant alleges that the joint rate to Colorado Springs should have been 40 cents and the local beyond 7 cents, or a total of 47 cents, and reparation is asked upon that basis.

It appears that the shipment in question was originally billed to Cañon City and transported to that point by the lines named in routing instructions given by the consignor. While the shipment was in transit, and before its arrival at Cañon City, complainant directed the delivering carrier to send it to Cripple Creek, and accordingly when the car reached Cañon City it was forwarded to the new destination. Complainant did not take possession of the car at Cañon City, and the change in billing appears to have been effected by erasing Cañon City

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and substituting Cripple Creek in the original billing. The Denver & Rio Grande, which had received the shipment at Salt Lake City, carried it to Colorado Springs and there delivered it to the Colorado Springs & Cripple Creek District Railway, which completed the transportation. The charges collected, as above stated, were in strict accordance with the tariffs then in effect by the route over which the shipment moved. There is a much shorter route by a narrow-gauge line from Cañon City to Cripple Creek, but the use of this route would have involved unloading and reloading at the point of connection. Moreover, as we read the tariffs, the rates are the same by both routes, as the joint rate of 50 cents, in effect when this shipment moved, applied to Colorado Springs as well as Cañon City, while the 19-cent rate appears to be a blanket rate which applies from Cañon City and other points as well as from Colorado Springs.

The facts respecting the joint rate in question appear to be as follows: This rate by the route over which the shipment moved was 40 cents to both Cañon City and Colorado Springs from April 15, 1905, to November 1, 1907. On the latter date it was advanced to 50 cents in connection with advances made at the same time on lumber from the north Pacific coast to a large section of the country. These advances were condemned by the Commission in various proceedings in which orders were made fixing the rates to be thereafter observed. One of these orders in effect restored the 40-cent rate by the Union Pacific system through Denver, but apparently not by the route over which the shipment in question moved. At any rate, following this order and in October, 1908, joint rates via Salt Lake and the Denver & Rio Grande appear to have been canceled to all points east of Goodnight, which is the first station west of Pueblo, and the joint rate to Goodnight and points west thereof, including Cañon City, restored to 40 cents, which rate to those points still remains in effect. The present through rate to Colorado Springs by this route therefore is the 40-cent joint rate to Goodnight, and an 11-cent local from Goodnight to Colorado Springs. It thus appears that the available through rate to Cripple Creek, based on the Cañon City combination, is now 59 cents, and at the time this shipment moved was 69 cents, the amount charged complainant.

Under all the circumstances disclosed, taking into account the considerable period of time during which the 40-cent rate was voluntarily accorded, the facts connected with its advance, the condemnation of that advance by the Commission, and the subsequent voluntary restoration of the 40-cent rate to Cañon City, we are of the opinion and so find that a reasonable rate to Cañon City at the time this shipment moved did not exceed 40 cents. We therefore hold that complainant was overcharged, by reason of the application of the 50-cent joint rate



to the shipment in question, to the extent of 10 cents per 100 pounds, amounting to \$65.40, for which he is entitled to reparation, with interest from May 1, 1908.

We are not prepared on this record to sustain the contention that complainant was entitled to a 7-cent local instead of the 19-cent local which was applied. It appears that the Colorado Springs & Cripple Creek District Railway Company from time to time for a number of years provided a proportional rate of 7 cents from Colorado Springs to Cripple Creek limited to "shipments in continuous transit produced at points in Colorado and New Mexico," though no tariff naming that rate was filed with the Commission until some time in August, 1908. That rate seems to have been subsequently canceled and after an interval restored, and later, about February 1, 1910, advanced to 10 cents, which is still in force. The circumstances under which this rate was established and the reasons for its allowance are detailed in the testimony. Generally speaking, it is claimed that the lumber for which this tariff was provided, most of which appears to have originated in Colorado, is of an inferior quality and used largely in connection with mining operations in the Cripple Creek district, although to some extent for ordinary building purposes. The low rate on this lumber was made to encourage the mining industry, whose products furnish the principal traffic of this company. Because of heavy grades, exceeding four per cent at some points, and other physical conditions this Cripple Creek Railway is a very expensive road to operate, and a rate of seven cents on lumber seems abnormally low for the service performed. It is certainly out of line with local lumber rates in that mountainous country.

We are of the opinion that it is not *per se* unlawful to make a proportional rate, lower than the local rate, and limit the application of that proportional to traffic coming from a specified territory. In other words, the fact that this road applies a lower rate on lumber originating in Colorado and New Mexico than on lumber from Oregon and other points of origin does not of itself establish a violation of the act. It is true that the difference in this case is great, perhaps too great, but on the showing now made we are not convinced that the disparity is unlawful or unduly prejudicial to complainant, and are therefore constrained to deny reparation for the difference between the local and proportional rates on the shipment in question. An order in accordance with these views will be entered.

18 I. C. C. Rep.

No. 2631.

ACME CEMENT PLASTER COMPANY  
v.  
WABASH RAILROAD COMPANY ET AL.

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*Submitted April 25, 1910. Decided June 3, 1910.*

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Returned empty wall plaster bags are by tariff rule required to be tied in bundles and properly tagged, showing the name of the consignor and consignee. The tags are lost in the course of transportation, and, though the bags are stamped with complainant's brand or name, it refuses to accept the bags on tender thereof by the carriers, because it is unable to identify the consignor so as to give him credit to the amount of 10 cents for each bag under an understanding between the consignor and the complainant. The complainant asserts that this embarrasses it in dealings with customers, and asks damages, claiming that the tags are lost through the negligence of the carriers, and that this is in violation of the act to regulate commerce, because the specific bags intrusted for carriage are not delivered to it, and the loss and damage (10 cents a bag) is directly traceable to the failure of the carrier to observe the provisions of its own tariff; *Held*, That since the measure of the damages is based upon an understanding existing between consignor and consignee, and not upon a rate, we have no jurisdiction under the doctrine established in *Joyes v. P. R. R. Co.*, 17 I. C. C. Rep., 361. Complaint dismissed.

*W. E. Fisse and John B. Daish* for complainant.

*B. M. Flippin* for Missouri Pacific Railway Company.

*R. B. Jenkins* for Quanah, Acme & Pacific Railway Company.

*N. S. Brown* for Wabash Railroad Company.

REPORT OF THE COMMISSION.

*PROUTY, Commissioner:*

Wall plaster is generally transported in bags rather than in bulk, and it is usual in the first instance to charge the purchaser for the bag as well as the plaster, the amount of the charge for each bag being 10 cents. But this charge is made with the understanding that if the bag is returned with the freight charges prepaid the 10 cents will be refunded. To assist the wall-plaster trade in carrying out this practice (though the complainant claims that it is for the convenience of the carrier in desiring to protect itself against claims for damages caused through the loss of the identifying marks on the bags) the defendant carriers have established a tariff rule that if the returned

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bags are tied in bundles and properly tagged, showing the name of the consignor and consignee, and the freight charges are prepaid, one-half of the fourth class rate will be charged, but if these conditions are not fulfilled or performed the fourth class rate—the usual rate applied to less-than-carload shipments of bags—will be collected.

In spite of these precautions there are thousands of bags now in possession of the carriers which the complainant refuses to accept, though the bags can be identified by its name or brand stamped upon them, because the tags have been lost and it is impossible to tell by what customers they have been sent, and credit therefor can not be given them. This results in embarrassment to the complainant in making settlement with customers and it is obliged to yield and give them credit according to their claim whether or not their specific bags have ever been returned rather than have a dispute and a resulting loss of trade.

The complainant asks reparation in the amount of \$8 for the failure of the defendant to deliver to it 80 bags properly packed and marked by a customer and delivered to the defendant for shipment. The complainant claims that it has been obliged to pay this \$8 to the customer by giving him credit on his account in that amount, although the specific bags have never been tendered to the complainant by the defendant. The real purpose of this proceeding is to obtain some ruling from the Commission which will compel the carriers to preserve intact these marks so that the complainant may know from what customer a particular package of bags is received and give credit accordingly.

The theory upon which the complaint is based is not that the rate in connection with the rule in regard to preparing the bags for shipment is unreasonable in and of itself or discriminatory in any aspect, but is that the defendants failed to deliver to the complainant, the consignee, the specific bags intrusted for carriage. The reasoning to show that the act to regulate commerce has been violated would seem to be that since the carrier has required the shipment of returned bags to be put up in bundles and properly tagged in order that the consignor obtain one-half of the fourth class rate, there is a duty to preserve the tags so that the bags may be carried at such a rate and the loss resulting from a breach of this duty is directly traceable to the failure of the carrier to observe the provisions of its own tariff on file with the Commission.

But it is clear that we have no jurisdiction over this matter under the doctrine established in *Joyes v. P. R. R. Co.*, 17 I. C. C. Rep., 361, wherein in substance it was decided that we would not under any circumstances award "general damages," but only damages which could be measured in some manner by the rate. The complainant has

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paid to its customer 10 cents a bag for 80 bags, which the consignor delivered to the carrier but which the carrier failed to deliver to complainant, and the loss is measured by an agreement which exists between the consignor and consignee rather than by a published rate. No rate question is before us, for if the consignor packs the bags in bundles and properly tags them they are entitled to and do actually obtain one-half of the fourth class rate. If the shipment was properly prepared so as to obtain one-half of the fourth class rate and the tag was destroyed in transit on account of the negligence of the carrier or a connecting carrier and the rate was thereupon advanced to fourth class in conformity to the tariff, we should have jurisdiction, because the amount of the rate would be directly affected by the negligence of the carrier and the rate itself would be the measure of the damage.

We do not, however, mean to say that no duty under the common law rests upon the carriers to maintain the identity of the shipments by the preservation of the identifying marks; we only hold that we have no jurisdiction to award the damages prayed for. The complaint will be dismissed

18 I. C. C. Rep.

No. 2718.

WILLIAM CAMERON & COMPANY, INCORPORATED,  
v.  
TEXAS & PACIFIC RAILWAY COMPANY ET AL

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*Submitted March 31, 1910. Decided June 3, 1910.*

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Carload of lumber transported from Provencal, La., to Santa Rita, N. Mex., was misrouted by originating carrier. Reparation awarded.

*C. W. Payne and M. W. Sleeper* for complainant.

*C. Schonfelder, jr.*, for Texas & Pacific Railway Company.

*D. L. Meyers* for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

**PROUTY, Commissioner:**

Complainant shipped a car of lumber January 15, 1908, from Provencal, La., a point on the Texas & Pacific Railway, to Santa Rita, N. Mex., located on the Atchison, Topeka & Santa Fe Railway. Complainant alleges that it delivered the shipment to the initial carrier without routing instructions; that the shipment was misrouted by the originating carrier and by reason thereof took a circuitous and indirect routing, resulting in an unjust and unreasonable charge, and reparation is claimed. The route actually taken was from Provencal to Texarkana via the Texas & Pacific; Texarkana to Kansas City via the St. Louis, Iron Mountain & Southern-Missouri Pacific lines; Kansas City to Santa Rita via the Atchison, Topeka & Santa Fe. The charges assessed were at the rate of \$1.12 per 100 pounds, made up of a combination rate of 23 cents to Kansas City and 89 cents, Kansas City to destination. The distance actually traveled by the shipment was 1,970.5 miles, whereas there was a more direct route of 1,076.4 miles, via which there applied a proportional rate of 18 cents from Provencal to El Paso on the Texas & Pacific plus a rate of 21 cents, El Paso to Santa Rita, via the Atchison, Topeka & Santa Fe, or a total of 39 cents. The shipment weighed 52,120 pounds, and there was assessed \$585.41. This amount

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should have been \$583.75. The charges at the lower combination would be \$203.27.

The defense of the Texas & Pacific Railway is that the misrouting was due to information furnished it by the Atchison, Topeka & Santa Fe Railway, and that that carrier should therefore be held liable. There is no dispute as to the facts, the carriers admitting the movement of the freight and the payment of the charges as alleged in the complaint. The point at issue is merely which of the carriers is liable for the damages caused the shipper.

On September 28, 1907, the agent of the Texas & Pacific wired the Atchison, Topeka & Santa Fe at Topeka, Kans., as follows:

Advise best basis, naming figures, on lumber to Santa Rita, New Mexico, when originating Mansfield, Louisiana. Please rush.

In answer to this the following message was received, dated September 30, 1907:

Wire twenty-eighth. Lumber carload Kansas City, Missouri, to Santa Rita, New Mexico, eighty-nine cents per cwt. Basis originating Mansfield, Louisiana.

It will be noted that this inquiry was some months prior to the shipment involved in this case and had no connection with this particular shipment, but the Texas & Pacific claims that the information sought in the telegram with regard to the shipment from Mansfield was properly applicable to the shipment from Provencal. It relied upon this former information in routing the shipment of complainant, and, therefore, assumes that if the carriers are responsible they are jointly responsible. The Atchison, Topeka & Santa Fe avers in this connection that its reply message related to a rate from Mansfield, which, if handled in connection with the Kansas City Southern Railway, would have to move via Kansas City, there being no other junction point available.

The Texas & Pacific Railway Company had in effect a proportional rate from Provencal to El Paso of 18 cents, applicable on traffic going to points in Arizona and New Mexico, to which no established joint rates were in effect, and it made no effort whatever to ascertain the rate from El Paso to Santa Rita, notwithstanding the fact that the telegrams relied upon quoted a rate of 89 cents Kansas City to Santa Rita. Certainly the Texas & Pacific was aware of the amount of the rate between Provencal and Kansas City, which must necessarily be added to the 89 cents Kansas City to destination. When witness for defendant Texas & Pacific Railway Company stated at the hearing that it had no knowledge of the rate from El Paso to Santa Rita, complainant's counsel read into the record a letter from the general freight agent of the Texas & Pacific Railway, dated September 5, 1907, addressed to complainant, stating that the

rate from El Paso to Santa Rita was 21 cents. In view of these facts we find that the misrouting of this shipment is chargeable solely to the originating carrier, the Texas & Pacific Railway Company.

Upon the record we find that the complainant was damaged by reason of the misrouting of his shipment, and reparation will be awarded against the initial carrier in the sum of \$382.14, with interest from February 8, 1908.

An order will be entered in accordance with these conclusions.

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No. 2745.

LEAGUE OF SOUTHERN IDAHO COMMERCIAL CLUBS

v.

OREGON SHORT LINE RAILROAD COMPANY, ET AL.

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*Submitted May 10, 1910. Decided June 6, 1910.*

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Defendants' rates on coal in carloads from Rock Springs, Kemmerer, and Diamondville, Wyo., to 12 Idaho points found unreasonable, and reasonable rates thereon prescribed for the future.

*Johnson & Johnson and Frank H. McCune* for complainant.

*P. L. Williams, D. Worth Clark, F. C. Dillard, and N. H. Loomis* for defendants.

#### REPORT OF THE COMMISSION.

**COCKRELL, Commissioner:**

This complaint, filed August 6, 1909, alleges that the carload rates of defendants on coal from Rock Springs, Kemmerer, and Diamondville, Wyo., to Boise, Buhl, Burley, Filer, Hailey, Rupert, Twin Falls, Gooding, Mountain Home, Nampa, Caldwell, and Weiser, Idaho, are unreasonable and unjust, unduly discriminatory, and in violation of the fourth section of the act.

Complainant is a voluntary association and represents said cities, which are all situated on the lines of defendant Oregon Short Line

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Railroad, in the state of Idaho. Caldwell, Gooding, Mountain Home, Nampa, and Weiser are on the main line of defendant; Boise and Hailey are on separate branch lines; and Buhl, Burley, Filer, Twin Falls, and Rupert are on the branch line extending from Minidoka to Buhl. The following table gives the distance in miles from Rock Springs and Kemmerer to these points and the distance the branch-line points are from the main line:

	Distance from—		
	Main line.	Kemmerer.	Rock Springs.
	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>
Boise .....	20	440	624
Buhl .....	74	307	391
Burley .....	21	254	339
Filer .....	60	290	383
Hailey .....	57	339	424
Rupert .....	13	246	331
Twin Falls .....	59	292	376
Gooding .....		298	383
Mountain Home .....		364	445
Nampa .....		419	504
Caldwell .....		428	513
Weiser .....		478	563

Diamondville is about one mile from Kemmerer.

Butte, Mont., is 437 miles from Kemmerer and 522 miles from Rock Springs. Anaconda, Mont., is 449 miles from Kemmerer and 534 miles from Rock Springs. The rate on coal from the Wyoming producing points to the Idaho points named is \$4 per ton, with the exception of Burley and Rupert, to which points a \$3.75 per ton rate is applied. From the Wyoming points to Butte and Anaconda the rates are \$3.25 per ton on lump coal and \$3 per ton on slack. Portland, Oreg., is 906 miles from Kemmerer and 991 miles from Rock Springs. The rate on all grades of coal to Portland is \$4 per ton. During the summer months there is a reduction in the rate to all points of 25 cents per ton. The mine owners also, during certain periods, contract with dealers at the Idaho points to reduce the rate at the mines 25 cents, provided not less than 500 tons are purchased during a period of ninety days in the summer.

The main line of defendant Oregon Short Line extends from Granger, Wyo., to Huntington, Oreg. Branch lines extend from Salt Lake City to Pocatello, Idaho, and from Pocatello to Butte, Mont., with numerous short branch lines in Idaho and Montana. Anaconda is about 26 miles from Butte and is reached by the Butte, Anaconda & Pacific Railway. The Kemmerer and Diamondville mines are on the Oregon Short Line in Wyoming. The Rock Springs mines are on the line of defendant Union Pacific in Wyoming, 85 miles east of Kemmerer. All the coal transported to the Idaho points passes through

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Pocatello. Butte is about 263 miles north of Pocatello, and Weiser, the most distant of the Idaho points, is 304 miles west of Pocatello. Gooding, the nearest point on the main line, is 124 miles from Pocatello. The average distance from Pocatello to all the Idaho points named in the complaint is 173 miles. Conditions of transportation from the mines to Pocatello are precisely the same whether the coal is destined to Butte or Anaconda or to the Idaho points. The rates to Butte and Anaconda are carried back to all points intermediate Butte to Pocatello as far as Idaho Falls, a distance of 213 miles. The \$4 rate complained of is blanketed to all points west of Shoshone, Idaho, to Portland, Oreg. Shoshone is 196 miles east of Weiser and 108 miles west of Pocatello.

It is noted that at Ketchum, Idaho, a point 70 miles north of Shoshone, a rate of \$4 on lump and \$3.50 on slack is applied. At Buhl, 74 miles from Minidoka, Idaho, at the end of another branch line the rate of \$4 is applied on shipments of coals of all kinds. The record does not show why at certain points in Idaho rates on slack are lower than on lump.

The average distance from the mines to the Idaho points is 389 miles, and the average distance from the mines to Butte and Anaconda is 485 miles. Profiles in the record show that grades are steeper and of greater frequency on the line from Pocatello to Butte than from Pocatello to any of the Idaho points.

It is asserted by the defendants that coal moves in greater volume to Butte and Anaconda than to any or all of the Idaho points. Coal is transported to the former points in solid train loads to supply smelters and other industries. It is further argued that rates thereto were made to meet competition over the Northern Pacific, Great Northern, and Chicago, Milwaukee & Puget Sound railroads, and that the rate to Portland is forced by competition with Australian and Canadian coal reaching that port by water. The average revenue per ton-mile on coal transported to the Idaho points is 9.35 mills. The average revenue on *all traffic* on the Oregon Short Line for the year 1909 was 9.51 mills. Coal is a low-grade commodity and ordinarily moves at much lower rates than the average commodity.

It is contended by the Oregon Short Line that the \$4 rate is not unreasonable, because it is made applicable to all the Idaho points without regard to the fact that most of them are located on branch lines. This does not justify an unreasonable rate to any of the points. It has been held by the Commission that carriers are justified within proper limitations in making somewhat higher rates to branch-line points than to main-line points. In this case, however, the same rate is applied to all points, both on the main and branch lines. The reasonableness of the rate is therefore to be tested as a whole.

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It is to be noted that the \$3.25 rate on lump and the \$3 rate on slack to Butte and Anaconda are applied to intermediate points for over 200 miles.

There is nothing in the contention of complainant that the rate to the Idaho points is in violation of the fourth section of the act, because the rate to Portland, the more distant point, is the same as the rate to the intermediate points, \$4 per ton. The application of the same rate to less distant points goes to the question of the reasonableness of the rate. We find no justification for a rate on coal to the Idaho points as high as the rate on the same traffic to Portland.

The rate on slack is made to Butte and Anaconda to supply the demand for that grade of coal used in industries located there. The record does not show that there has been any hardship to the Idaho points, because differing rates are not made on lump and slack.

Our conclusions are, and we so find, that the rates complained of from Rock Springs, Kemmerer, and Diamondville, Wyo., to the twelve Idaho points in question are unreasonable in and to the extent that they exceed \$3.50 per ton and that defendants should establish and maintain for the future from and to such points a rate on coal not to exceed \$3.50 per ton.

An order in accordance herewith will be issued.

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No. 2878.  
OUERBACKER COFFEE COMPANY  
v.  
SOUTHERN RAILWAY COMPANY ET AL.

*Submitted May 9, 1910. Decided June 3, 1910.*

Complainant is engaged at Louisville, Ky., in shipping coffee in packages to various dealers in other states. Light articles of small value are inclosed in the packages as premiums for the purpose of advertising or stimulating the sale of the coffee. Official and Southern Classifications provide for inclusion of advertising matter or articles in packages, but defendants decline to extend that privilege to complainant. Some dealers who offer premiums ship the premiums separately and distribute them on presentation of coupons that are inclosed in the packages. Obviously if all were required to ship in that way no discrimination would appear; *Held*, That it is unjustly discriminatory for defendants to grant to other shippers the privilege of including advertising matter and articles in packages of merchandise and to refuse the same or similar privilege to complainant.

*Edward W. Hines* for complainant.

*A. P. Humphrey, jr.*, for Southern Railway Company, Southern Railway Company in Kentucky, and Chesapeake & Ohio Railway Company.

*Sloss D. Baxter* for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

*CLARK, Commissioner:*

For many years carriers have provided, under classification rules, that the rate for the highest classed article must be charged on any package containing articles of more than one class. The question presented here is whether sealed packages of coffee, each of which contains an article taking first class rating, shall be transported at the first class rating or under some rule or regulation under which a lower total charge would result.

Complainant is engaged at Louisville, Ky., in wholesaling and shipping coffee to retail dealers located at points on lines of defendants in Kentucky, Indiana, Tennessee, West Virginia, Virginia, and Pennsylvania. Shipments from Louisville move under the rules of Official and Southern Classifications, dependent upon tariff reference

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thereto and the direction in which they are transported. Under the Official Classification coffee in packages, less than carloads, is rated at 20 per cent below third class, but not lower than fourth class rates; in Southern Classification at fifth class. No complaint is made as to these or the first class ratings.

Complainant sells many brands of coffee, four of which have articles other than coffee inclosed in the carton or bag containing the coffee. In two brands toys, wrapped in paper to prevent contact with the coffee, are inclosed. These toys cover a wide range of small articles, such as thimbles, glass-bead necklaces, whistles, card games, paper flowers, tricks, etc., which, if shipped separately, would take the first class rating under Official and Southern Classifications. They cost one-half to two-thirds of a cent apiece, and a hundred weigh two pounds. With one brand a tumbler and with another brand a spoon, costing less than a cent each, is inclosed. None of these articles is marked with a name or advertisement. They do not increase the size of the package, the amount of coffee varying with the bulk of the article inclosed. For example, the bag in which a tumbler is inclosed contains from 12½ to 13 ounces of coffee. The tumbler weighs eight ounces. Each case of coffee contains a card on which it is stated that in each separate package is inclosed a prize, according to the brand of the coffee.

When complainant's predecessor commenced the package-coffee business, although toys were then inclosed, the shipments were billed as coffee. Shortly thereafter, on advice of one of the defendants, it was billed according to the weight of the coffee and the weight of the toys, the rate for the weight of each being charged, but this was objected to as not being in accordance with tariff rules and requirement was made that shipments be billed as "coffee and notions" on which first class rating was applied.

Two brands of complainant's coffee are billed as "coffee" and the rate applicable to coffee is applied, which complainant's president testified was done awaiting the decision of the Commission in this case.

Since 1902 provision has been made in all of the classifications for the inclusion of printed advertising matter with carload and less-than-carload shipments, restricted to a certain percentage of the gross weight of the package or carload.

In 1902 Rule 10 of the Southern Classification, in addition to requiring that the rate for the highest classed article must be charged on any package containing articles of more than one class, provided that it was not intended "to prohibit the shipping of gift or advertising articles with package goods, packed, provided that the gift or advertising article does not exceed 5 per cent of the total weight." In 1905 this provision was eliminated and the article which might be inclosed

was limited to printed advertising matter, and the rule was further restricted in its application by the provision that—

The above ratings will not apply on timepieces, thermometers, fans, paper weights, or other gift articles which will be subject to the separate ratings applying on such articles.

Thereafter, in 1907 and 1909, this was amended by adding after the words "paper weights," "printed forms" and "loose order blanks or envelopes."

Certain carriers in Southern Classification territory have recently provided an exception to the Classification as follows:

The rate for the highest classed articles must be charged on any package containing articles of more than one class. This rule does not prohibit the shipment of printed advertising matter in package goods or in the same package with the goods which it advertises, at the rating applying on such goods, provided that the printed advertising matter does not exceed 2 per cent of the gross weight of the package; nor articles for advertising purposes shipped in the packages they advertise, provided only one such complete advertising article is contained in each package. The commodity shipped to be charged at actual weight, plus weight of the package (subject to the established minimum weight when in carload), and at the rating applicable on such commodity, the advertising article to be charged at actual weight plus 20 per cent at the less-than-carload rate on such article, as per established tariff. In no case, however, shall the advertising article be charged at less than 10 per cent of the gross weight of the package in which it is contained, and when in less than carload, the minimum charge to be not less than prescribed in Rule 7 of the Southern Classification.

They have not, however, made this exception applicable from Louisville.

An exception to the Official Classification provides:

*Advertising premiums*, i. e., articles placed in packages with other commodities (C. L. and L. C. L.) for advertising purposes.

**NOTE.**—An article for advertising purposes may be shipped in the package with the commodity it advertises, provided only one such complete advertising article is contained in each package; the commodity shipped to be charged at actual weight, plus weight of the package (subject to the established minimum carload weight when in carloads), and at the rating applicable on such commodity; the advertising article to be charged at actual weight, plus 20 per cent at the less-than-carload rate of such article, as per established tariffs. In no case, however, shall the advertising article be charged at less than 10 per cent of the gross weight of the package in which it is contained.

All of the defendants are parties to tariffs containing this rule.

Since the promulgation of the above rule complainant has billed each case of 100 packages of coffee, weighing 120 pounds, as 108 pounds of coffee and 12 pounds of advertising notions, although, as before stated, the toys weigh but 2 pounds. Complainant expressed entire satisfaction with this rule. When it developed at the hearing, however, that agents of defendant Louisville and Nashville had been applying the exception to the Southern Classification on shipments of coffee via that road, its general freight agent stated that it had been

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done without authority and that instructions would at once be given to discontinue the practice.

In 1902 lines in southern territory established the Southern Weighing and Inspection Bureau which called to the carriers' attention the fact that they had been handling foodstuffs containing premiums at the foodstuffs rate, in violation of Rule 10 of the Southern Classification. It was deemed by the carriers to be unfair to immediately discontinue a practice which, although forbidden by the Classification, had been permitted by a number of the carriers, and therefore the addition to the rule allowing the shipping of gift or advertising articles with package goods, provided the gift or advertising article did not exceed 5 per cent of the total weight, was established. This was met by protests from shippers who wanted to ship their premiums in straight packages to be exchanged for coupons instead of in the package of food stuffs, which resulted in the issuance of the rule previously stated in reference to the inclusion of *printed* advertising matter.

The rules circular of the Western Trunk Lines contains the following:

Premiums, articles in packages containing.—Articles in packages containing premiums in cases, C. L. and L. C. L., will be charged at 110 per cent of the rates provided for the same articles packed in the same manner as without premiums; provided, that C. L. containing packages, both with and without premiums, only such portion of the C. L. as contains premiums will be charged 110 per cent, the remainder of the C. L. to take the C. L. rate for the article.

*Shippers will be required to state on shipping tickets whether or not packages contain premiums.*

A letter from the secretary of the Retail Grocers' Association of the United States is in the record protesting against any rule which would permit the inclusion of toys in packages of coffee, in which it is stated that the association has from time to time most vigorously opposed and denounced the practice.

Complainant argues that the articles which are shipped with its coffee are advertising premiums of little intrinsic value, and that the exception to Southern Classification is broad enough to include articles placed by the manufacturer or wholesale dealer in sealed packages of any commodity for the use of the ultimate consumer and for the purpose of inducing buyers to continue their patronage and to recommend the goods to other persons, but we have seen that the exception is not applicable via lines out of Louisville, and has been wrongfully used. It also appears that one of the water lines out of New York had the rule in effect to southern territory, and the connecting rail carriers participating in the tariff containing the rule thereby had the rule applicable via their lines. The Southern Railway, one of such carriers, has always been and is opposed to the rule, but adopted it for competitive reasons. It is argued that the extent to which rules

permitting the inclusion of premiums in packages of foodstuffs have been adopted shows that carriers generally recognize the fact that it is not reasonable to charge upon the entire package containing a premium used for advertising purposes the rate which the premium bears.

Defendants contend that their rules and regulations are necessary because there is no method by which they can check or verify the shippers' statement of weights and character of premiums, since it is impracticable to inspect the contents of paper packages without impairing or destroying their selling value, and that, therefore, opportunity exists for underbilling and misrepresentation and for the application of lower charges to the transportation of such package-goods premiums than would be assessed if they were transported separately. Inasmuch as some dealers follow what is known as the coupon system—that is, the giving of a gift or prize on the presentation of a coupon given as an inducement to purchase a particular brand of goods—it is argued that there is no commercial necessity for the inclusion of the premiums in the packages, and that, as shippers using the coupon system pay tariff rates at actual weights on shipments of such premiums, as do also regular dealers in such articles, to permit a different rating on premiums when inclosed in packages would result in undue preference, advantage, and discrimination in violation of the act. Obviously, if all were required to ship in that way no discrimination would appear.

It is suggested that any rule would involve the acceptance of the shipper's statement as to the respective weights of the coffee and the premium, and also as to the character of the premiums, and the granting of the same privilege to all shippers of other commodities under like circumstances and conditions. Finally, it is insisted that there is no provision of the act to regulate commerce which gives the Commission the power to prescribe other than just and reasonable rates, and in view of the fact that the first class rating is not attacked in and of itself, they should not be required to establish any rule or regulation which would permit complainant to transport at lower rates articles to which the first class rating applies. We think that the Commission has full power to remove unjust discrimination resulting from a rule or a practice as well as that resulting from a rate.

The defendants argue that the toys, tumbler, and spoon are not advertising premiums, but are gifts and prizes. But that fact, slight and inconsequential as it is, should not prevent complainant being accorded the same privilege where the transportation service is not dissimilar, because the character of the inclosed article, whether advertisement, advertising premium, gift, prize, or what not, is immaterial; the end sought is to induce the consumer to purchase a particular brand of goods, and when a carrier grants one shipper over its

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line a lawful privilege and by a strained construction of its tariff rule denies the same concession to another shipper over its line under similar circumstances and conditions, the latter is subjected to undue discrimination.

Complainant in its brief asks that a rule be established under which—the rate upon toys be applied only upon a proportionate part of the package and that the rate applicable to coffee shall be applied upon the remainder—

Or that—

coffee carrying advertising gifts or premiums take the fourth class rate or some other fixed rate just enough greater than the rate on coffee to represent a fair difference between the service rendered in carrying a package of coffee containing an advertising gift and the service rendered in carrying such a package without an advertising gift.

The difficulty about the latter proposition is to determine the proper difference.

Undoubtedly under a rule which requires shippers to state whether or not packages contain premiums there is opportunity for underbilling, and carriers can not check the contents of packages without destroying the commercial value of some of the packages, but the same would be equally true if no rule permitting the inclusion of premiums was in effect.

Whether or not such a rule constitutes an unjust discrimination against the shipper paying the tariff rate on separate shipments of the premiums is not capable of demonstration on this record. It may be that the amount of the charges on the premiums inclosed with packages would be in excess of those on the same number of articles shipped separately. For example, the regular dealer could hardly be heard to complain of unjust discrimination as compared with the premium shipper where the latter paid first class rates on 12 pounds of toys when their actual weight was but 2 pounds.

All defendants are parties to a rule which meets complainant's contention. That rule is broad enough to answer all of defendants' arguments. We are of the opinion, from all the facts in this case, that complainant's premiums are such as come within the exception to the Official Classification and that it is therefore entitled thereunder to have transported to points to which it is applicable and via the lines of defendants parties thereto, shipments of coffee in sealed packages containing such advertising premiums.

We are also of the opinion that it is unduly discriminatory for defendants parties to Southern Classification to accord other shippers the privilege granted by the exception to the Southern Classification and refuse to establish a similar privilege to apply on complainant's shipments.

An order in accord with these views will be entered.

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No. 2999.  
COLORADO COAL TRAFFIC ASSOCIATION  
v.  
COLORADO & SOUTHERN RAILWAY COMPANY ET AL

*Submitted May 24, 1910. Decided June 2, 1910.*

1. Complainant's members insist that they require a better rate on their product because it costs more to mine coal in the Walsenburg district and because Rock Springs coal finds readier sale for domestic uses; *Held*, That these are conditions which carriers ought not to be required to equalize by rate adjustments.
2. Merely because Walsenburg coal takes lower rates that are charged from Rock Springs to points north of Dakota Junction, under the competitive conditions there shown to prevail, it does not follow that the application of the same rates from Walsenburg as from Rock Springs to points east of Dakota Junction, where similar competitive conditions do not obtain, results in unreasonable rates or unjust discrimination against Walsenburg.
3. Under the circumstances and conditions disclosed by the record the through rates on coal from the Walsenburg district to points east of Dakota Junction are not found to be unreasonable.
4. The Colorado & Southern and the Chicago & North Western required to maintain rates on coal from the Walsenburg district to certain points in Nebraska which shall be no higher than are contemporaneously maintained from Rock Springs, Wyo., to the same points.

*C. W. Durbin and Fred Williams* for complainant.

*S. A. Lynde* for Chicago & North Western Railway Company.

*E. E. Whitted and J. M. Cates* for Colorado & Southern Railway Company.

*F. C. Dillard and Dorsey & Hodges* for Union Pacific Railroad Company.

REPORT OF THE COMMISSION.

*KNAPP, Chairman:*

The complaint in this case relates to rates on coal from mines in the Walsenburg district of southern Colorado to certain points on the lines of the Chicago & North Western in Nebraska, namely, points between Chadron and Stuart, and to Belle Fourche, S. Dak. It is alleged that the through rates published to these points by the Colorado & Southern and the Chicago & North Western are unreasonable and discriminatory. It is also alleged that the through rates to points east of Chadron are higher than the combination of locals.

The Walsenburg district is about 180 miles southeast of Denver, Colo., and is reached by the lines of the Colorado & Southern. Mines

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located in Wyoming produce coal which competes in the markets in question with that produced from the mines of complainant. Coal mined at Rock Springs, Wyo., seems to furnish the main competition which complainant meets in this territory, although considerable Hanna and Hudson (Wyo.) coals are sold.

Distance in miles and rates per ton from the Walsenburg district mines and the mines in Wyoming to the points in question are shown by the following tables:

*From Walsenburg.*

To—	Distance.	Rate.	To—	Distance.	Rate.
	<i>Miles.</i>			<i>Miles.</i>	
Crawford, Nebr.....	535	\$4.00	Johnstown, Nebr.....	733	\$5.70
Whitney, Nebr.....	543	4.00	to		
Dakota Junction, Nebr.....	557	4.00	Stuart, Nebr.....	783	4.00
Chadron, Nebr.....	562	4.75	Rapid City, S. Dak.....	656	
Hay Springs, Nebr.....	582	5.35	Deadwood, S. Dak.....	701	
Rushville, Nebr.....	593	5.40	Lead, S. Dak.....	706	
Clinton, Nebr.....	598	5.45	Whitewood, S. Dak.....	692	
Irwin, Nebr.....	630	5.55	Belle Fourche, S. Dak.....	711	
Merriman, Nebr.....	634	5.60			
Cody, Nebr.....	659	5.60			
Nenzil, Nebr.....	667	5.65			
to					
Wood Lake, Nebr.....	722				

*From Rock Springs.*

To—	Distance.	Rate.	To—	Distance.	Rate.
	<i>Miles.</i>			<i>Miles.</i>	
Crawford, Nebr.....	546	\$4.75	Johnstown, Nebr.....	744	\$5.45
Whitney, Nebr.....	556	4.75	to		
Dakota Junction, Nebr.....	568	4.75	Stuart, Nebr.....	794	4.75
Chadron, Nebr.....	573	4.75	Rapid City, S. Dak.....	667	
Hay Springs, Nebr.....	583	5.10	Deadwood, S. Dak.....	712	
Rushville, Nebr.....	604	5.15	Lead, S. Dak.....	717	
Clinton, Nebr.....	609	5.20	Whitewood, S. Dak.....	703	
Irwin, Nebr.....	631	5.30	Belle Fourche, S. Dak.....	722	
Merriman, Nebr.....	645	5.35			
Cody, Nebr.....	670	5.35			
Nenzil, Nebr.....	678	5.40			
to					
Wood Lake, Nebr.....	733				

*From Hanna.*

To—	Distance.	Rate.	To—	Distance.	Rate.
	<i>Miles.</i>			<i>Miles.</i>	
Crawford, Nebr.....	387	\$4.00	Johnstown, Nebr.....	585	\$4.70
Whitney, Nebr.....	397	4.00	to		
Dakota Junction, Nebr.....	409	4.00	Stuart, Nebr.....	635	4.00
Chadron, Nebr.....	414	4.00	Rapid City, S. Dak.....	406	
Hay Springs, Nebr.....	434	4.35	Deadwood, S. Dak.....	453	
Rushville, Nebr.....	445	4.40	Lead, S. Dak.....	458	
Clinton, Nebr.....	450	4.45	Whitewood, S. Dak.....	444	
Irwin, Nebr.....	472	4.55	Belle Fourche, S. Dak.....	463	
Merriman, Nebr.....	490	4.60			
Cody, Nebr.....	511	4.60			
Nenzil, Nebr.....	519	4.65			
to					
Wood Lake, Nebr.....	574				

*From Hudson.*

To—	Dis- tance.	Rate.	To—	Dis- tance.	Rate.
	<i>Miles.</i>			<i>Miles.</i>	
Crawford, Nebr.....	303	\$2. 55	Johnstown, Nebr.....	501	\$3. 25
Whitney, Nebr.....	313	2. 55	to		
Dakota Junction, Nebr.....	325	2. 65	Stuart, Nebr.....	551	
Chadron, Nebr.....	330	2. 65	Rapid City, S. Dak.....	424	2. 65
Hay Springs, Nebr.....	350	2. 75	Deadwood, S. Dak.....	460	2. 75
Rushville, Nebr.....	361	2. 85	Lead, S. Dak.....	474	2. 75
Clinton, Nebr.....	366	2. 95	Whitewood, S. Dak.....	460	2. 65
Irwin, Nebr.....	388	3. 10	Belle Fourche, S. Dak.....	479	3. 00
Merriman, Nebr.....	402	3. 15			
Cody, Nebr.....	423	3. 25			
Nenzil, Nebr.....	435	3. 35			
to					
Wood Lake, Nebr.....	490				

Coal from the Walsenburg district reaches the above points over the lines of the Colorado & Southern to Denver, the Union Pacific from Denver to Cheyenne, Wyo., the Colorado & Southern from Cheyenne to Orin Junction, Wyo., and the Chicago & North Western from Orin Junction to destinations. The evidence shows that the Colorado & Southern has trackage rights over the Union Pacific from Denver to Cheyenne. From Hudson coal moves over the lines of the Chicago & North Western, and from Hanna and Rock Springs the movement is over the Union Pacific to Cheyenne, Colorado & Southern to Orin Junction, and the Chicago & North Western to destinations. The Chicago & North Western and the Union Pacific lines are generally parallel, extending from east to west, and the Colorado & Southern extends in a general northwesterly direction from Walsenburg, having its northerly terminus at Orin Junction.

The Chicago, Burlington & Quincy forms with the Colorado & Southern a through line via Denver from the Walsenburg district which intersects the North Western line at Crawford, and thence extends in a northwesterly direction to Billings, Mont., through New Castle and Sheridan, Wyo., where coal is produced. A branch line of the Burlington extends in a northerly direction from Edgemont, S. Dak., to Deadwood and Lead. It is contended by the Chicago, & North Western that the Burlington is a competitor in the transportation of coal from the Walsenburg district to Crawford and north to Deadwood and Lead, and that it is also a competitor as to this traffic in the Black Hills territory from Sheridan and New Castle. This competition caused the Burlington to make rates from Sheridan on the one hand, and later from Walsenburg on the other to Crawford, and from Crawford as a blanket rate north to Deadwood and Lead, to meet the rate made by the Chicago & North Western in connection with the Colorado & Southern and Union Pacific from Hanna. The Burlington established primarily the Hanna rate as its rate from its Wyoming mines to Crawford, and points north as far as Lead and

Deadwood, to meet the rate made by the North Western to the same points. Later it applied the Hanna rate to coal from Walsenburg. The North Western met this competition by applying the Hanna rate to Walsenburg coal moving to Deadwood and Lead, and as a blanket rate from Dakota Junction, where its line to the Black Hills branches from the main line. The Hanna rate was \$4 per ton and has been and is applied north of Dakota Junction as far as Deadwood and Lead.

The rate to the above territory from Rock Springs, 159 miles west of Hanna, was 75 cents per ton higher than the Hanna rate and was left at that figure to points north of Dakota Junction. The Burlington competition did not extend to Rock Springs. Beyond Deadwood and Lead the Burlington competition ceased to influence the rates made by the Chicago & North Western, and at Belle Fourche the latter line restored the Walsenburg rate to what is insisted is its proper relation—that is, the Rock Springs rate. In the same manner, east of Dakota Junction the Burlington competition had no effect on the rates and they were fixed on what is asserted to be the proper basis. That is to say, rates from Hudson range from \$1.50 to \$1.80 per ton less than from Hanna; rates from Hanna are less than from Walsenburg and Rock Springs, and rates from Rock Springs and Walsenburg are on or should be on the same basis. The Chicago & North Western's proportion of the rates from Hanna, Rock Springs, and Walsenburg for its haul from Orin Junction to all the points in question is the same. In the present adjustment of rates east of Chadron as between Walsenburg and Rock Springs the latter has been given rates somewhat less than the former. It is conceded by defendants that this is an error and that the rates from Walsenburg to all points east of Chadron should be no higher than those from Rock Springs to the same points.

With respect of the reasonableness of the rates in question no evidence was submitted by complainant except tables of comparisons with rates from points east of the Missouri and Mississippi rivers. There is no claim that the conditions under which this eastern coal is transported are similar to those affecting the Walsenburg coal. Examination of findings by the Commission respecting coal rates generally from the Walsenburg district, which have been under consideration in various proceedings, shows that the rates in question are not out of line with those heretofore found to be reasonable. For the most part the points east of Chadron and north of Dakota Junction are in an unproductive territory where transportation conditions are quite unfavorable. The rates taken as a whole yield on an average a little more than seven mills per ton per mile, and we do not feel warranted in holding that they are unreasonable.

It is the contention of complainant, however, that because Walsenburg has a rate of 75 cents per ton less than Rock Springs at Dakota

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Junction and points north, rates east of Dakota Junction ought to be made on the same basis. The distance from Rock Springs and Walsenburg is practically the same to all the points in controversy, and so far as appears the transportation conditions are not substantially different. Complainant's members insist that they require a better rate on their product because it costs more to mine coal in the Walsenburg district and because Rock Springs coal finds readier sale for domestic uses. These are conditions which carriers ought not to be required to equalize by rate adjustments. We are not convinced and therefore do not find, in the absence of a showing that the rates are unreasonable, and merely because Walsenburg coal takes lower rates than are charged from Rock Springs to points north of Dakota Junction, under the competitive conditions there shown to prevail, that the application of the same rates from Walsenburg as from Rock Springs to points east of Dakota Junction, where similar competitive conditions do not obtain, is an unjust discrimination against Walsenburg.

Concerning the lower combination of locals to certain points east of Dakota Junction it is insisted by the Chicago & North Western that Orin Junction is the point where it receives its coal from the Colorado & Southern whether it originates at Rock Springs, Hanna, or Walsenburg; that its earnings on coal from each of these shipping points to points between Chadron and Stuart are the same; that Orin Junction is the basing point in making through rates as well as in handling the traffic; and that it is therefore the proper point to take into consideration in comparing through rates with local combinations. It is also asserted that the combination on Orin Junction is invariably higher than the through rates to all points east of Orin Junction, including the points between Chadron and Stuart, and that appears to be the case.

It is likewise pointed out that no traffic originates at Dakota Junction, and that it is merely a point where the rails of the Black Hills line of the Chicago & North Western connect with the main east and west line through Nebraska. Defendants therefore insist that the \$4 rate, which complainant seeks to use for making the lower combination, is a competitive rate, unreasonably low on a mileage basis as compared with the Rock Springs and Hanna rates, and that it ought not to be taken into account in making up rates to points between Chadron and Stuart, where competition does not operate and where rates are adjusted as between Walsenburg, Hanna, and Rock Springs on a relatively equal basis.

It is further contended that there is no good reason why Walsenburg coal shippers should be given the Hanna rate at Chadron or any point east thereof. Walsenburg and Rock Springs, it is conceded, should have the same rates to the points in question, and defendants assert that they would not be justified in giving Walsenburg shippers

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lower rates for equal distances than Rock Springs shippers are charged. Under these circumstances and conditions we are of opinion and so find that the through rates to points east of Dakota Junction are not shown to be unreasonable, except wherein the rates from the Walsenberg district are higher than rates from Rock Springs to the same points.

The defendants The Colorado & Southern and Chicago & North Western will be required to maintain rates on coal in carloads from the Walsenburg district to all points on the line of the Chicago & North Western in Nebraska from Chadron as far east as Stuart which shall be no higher than are contemporaneously maintained from Rock Springs to the same points.

An order will be entered accordingly.

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No. 3120.  
**PANKEY & HOLMES**  
*v.*  
**CENTRAL NEW ENGLAND RAILWAY COMPANY ET AL**

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*Submitted April 25, 1910. Decided June 3, 1910.*

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Defendants' rates on apples from Mount Ross and Elizaville, N. Y., to Birmingham, Ala., via the Seaboard Despatch, not found on the facts in the record to be unreasonable. Reparation denied.

*Frederick S. Baker and Hugh C. Crane for complainant.*  
*E. G. Buckland, Ed. Baxter, R. Walton Moore, George Stuart Patterson, and Clyde Brown for defendants.*

**REPORT OF THE COMMISSION.**

**CLEMENTS, Commissioner:**

This is a complaint against the carload rate on apples from Mount Ross and Elizaville, N. Y., to Birmingham, Ala., via the Seaboard Despatch. The Seaboard Air Line is the delivering carrier in this route. Reparation in the total sum of \$75.89 is asked on three shipments, one of which moved from Mount Ross on November 20, 1909, and two from Elizaville on November 25, 1909, and November 27, 1909, respectively. There was no joint rate in effect and the lawful combination of 51 cents was made up 9 cents to Poughkeepsie and 42 cents beyond. This rate was charged on the shipments from Elizaville, but the shipment from Mount Ross was charged at the rate of 52 cents. Defendants admit this is an error, however, and are willing to refund the resulting straight overcharge of \$3.04 without an order.

The complaint is that the rate charged was unreasonable in view of a rate of 42 cents from the same points of origin to Birmingham via the Southern Despatch, which operates through Hagerstown and Bristol with the Alabama Great Southern as the delivering carrier. The Seaboard Despatch operates through Portsmouth or Richmond, the shipments in question having moved via the latter gateway.

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The Central New England is the originating carrier in either the Seaboard Despatch or Southern Despatch route, and while participating in the 42-cent rate via the Southern Despatch this carrier refuses to participate in that rate via the Seaboard Despatch because of disagreement as to divisions with lines north of the Virginia cities. The Seaboard Air Line asserts that it would join in the 42-cent rate as in the division it would receive its present proportional of 26 cents. As already suggested, the Seaboard Air Line is not a participant in the Southern Despatch route. Complainant testifies, however, that the Seaboard Despatch route is preferred because of prompter delivery on team tracks at Birmingham by the Seaboard Air Line than the other carriers give. But it was also of the opinion that the same rate applied, this information having been given by the commercial agent of the Seaboard Air Line in error. Complainant states that as soon as the error was discovered the Seaboard Air Line informed them of the higher rate.

There is no evidence as to the reasonableness of the rate via the route these shipments moved except a comparison with the Southern Despatch rate. The petition does not ask for the establishment of a through route. Neither is it contended that the Southern Despatch route is inadequate. As a matter of fact, that route in addition to affording a lower rate is 104 miles shorter. Upon the present record we can find no basis for the relief asked and the complaint must be dismissed. It will be so ordered.

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No. 2468.

## TEXAS GRAIN &amp; ELEVATOR COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY  
COMPANY ET AL.

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Submitted March 31, 1910. Decided June 7, 1910.

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Rate on snapped corn found to be unreasonable. Reparation awarded.

*E. M. Rogers* for complainant.

*M. L. Bell, A. B. Enoch, and M. J. Dowlin* for Chicago, Rock Island & Pacific Railway Company and Chicago, Rock Island & Gulf Railway Company.

## REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

This petition, filed May 12, 1909, is for reparation on two carloads of snapped corn (corn in the shuck), one of which was shipped from Ninnekah, Okla., to Clarksville, Tex., April 20, 1907, and the other from Addington, Okla., to Clarksville, Tex., on May 3, 1907. The rate collected on the former carload was 28½ cents per 100 pounds, or a total of \$96.33, and on the latter 21½ cents per 100 pounds, or a total of \$78.99. Complainant alleges that the rate charged from Ninnekah to Clarksville was unreasonable, in so far as it exceeded 23 cents, and that the rate charged from Addington to Clarksville was unreasonable, in so far as it exceeded 17 cents. Reparation is claimed in the sum of \$15.76 on the former car and \$15.80 on the latter, or a total of \$31.56. The rates charged were, as provided in the tariff, 125 per cent of the shelled-corn rates, which were 23 and 17 cents, respectively.

No evidence was introduced on behalf of complainant, it relying on the ruling of the Commission in the case of the *Ocheltree Grain Co. v. St. L. & S. F. R. R. Co.*, 13 I. C. C. Rep., 46, wherein the Commission held that a rate charged upon a shipment of snapped corn was unjust and unreasonable.

Complainant's counsel read into the record a letter from the general freight agent of the Chicago, Rock Island & Gulf Railway Company stating that as the tariff provision requiring a higher rate on snapped corn from Oklahoma to Texas points had been removed

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within six months from the date of shipments, that carrier would be willing to adjust the matter by reparation, provided the Texas & Pacific Railway and the Chicago, Rock Island & Pacific Railway would agree thereto. There is also in the record a letter from the general freight agent of the Texas & Pacific indicating willingness of that carrier to join the other defendants in settling the matter. It became necessary to set the case down for formal hearing, however, at which the Chicago, Rock Island & Pacific and the Chicago, Rock Island & Gulf appeared and defended the rates charged on the ground that snapped corn does not load as heavily as shelled corn.

A similar issue was presented in *Ocheltree Grain Company, supra*, in which the defendant sought to justify higher rates upon snapped corn than shelled corn because of lighter loading. Whether, under all the circumstances, the rates should be the same we did not then decide, and we do not undertake to decide upon this record. The history of the rates in that case led us to conclude that the charge on snapped corn therein involved was unreasonable, as the carriers had themselves maintained lower rates both before and after the movement of the shipment in question. The history of the rates involved in this case is of a similar nature.

Referring to the fact that the rate on snapped corn was for some time the same as the rate on shelled corn, witness for defendants gave as the reason for changing their relation, that there had been a general complaint from various grain dealers that snapped corn was being handled somewhat to the disadvantage of the market on shelled corn; that at that time there was a very heavy movement of traffic over all the roads and a shortage of equipment, and the rate was raised on snapped corn with a view to inducing dealers to ship the corn in a shape that would load heaviest. This witness further testified that while at present the rates on snapped corn and shelled corn are the same, this is due to competitive conditions. It is the custom for other lines to apply the shelled-corn rate to snapped corn, and defendants are therefore compelled to do likewise.

Snapped corn is a less valuable commodity than shelled corn, and in answer to the testimony that snapped corn would not load as heavily as shelled corn, it appears that the two cars in question were loaded to their full visible capacity, and that one of them contained 35,030 pounds and the other 37,170 pounds, whereas the minimum for snapped corn is the actual weight when loaded to visible capacity, but not less than 24,000 pounds.

Upon the record we find that the rates charged upon these shipments, 28½ and 21½ cents, respectively, were unjust and unreasonable in so far as they exceeded 23 and 17 cents, respectively, and reparation will be awarded on this basis in the total sum of \$31.56, with interest from May 13, 1907.

No. 1803.  
DAVID STOTT  
v.  
MICHIGAN CENTRAL RAILROAD COMPANY ET AL.

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*Submitted April 13, 1910. Decided June 3, 1910.*

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Complainant, a miller at Detroit, Mich., brings in wheat by water from Duluth, grinds it at Detroit, and ships the product by all rail to various eastern destinations. Upon complaint that defendants apply from Detroit to these eastern destinations a rate on wheat which has come to Detroit by water which is less than the rate which they apply upon the flour which the complainant has ground from similar wheat, and also that defendants grant to millers located upon their lines in case of this wheat the milling-in-transit privilege; *Held*, That upon the facts disclosed by the record and for the reasons given in the report the complaint should be dismissed. *Hecker, Jones, Jewell Milling Co. v. B. & O. R. R. Co.*, 14 I. C. C. Rep., 356, cited and distinguished.

*Shire & Jellinek* for complainant.

*O. E. Butterfield* for New York Central Lines.

*L. C. Stanley* for Grand Trunk Railway System.

REPORT OF THE COMMISSION.

**PROUTY, Commissioner:**

The complainant is a miller located at Detroit, Mich. In the conduct of his business he brings in wheat by water from Duluth, grinds it at Detroit, and ships the product by all rail to various eastern destinations. His complaint is that the defendants apply from Detroit to these eastern destinations a rate on wheat which has come to Detroit by water which is less than the rate which they apply upon the flour which the complainant has ground from similar wheat; and also that they grant to millers located upon their lines in case of this wheat the milling-in-transit privilege. The original proceeding was against the Michigan Central, the Canadian Pacific, and the Grand Trunk, but the eastern connections of these lines have been made parties and are now before the Commission.

The present rate on flour from Detroit to New York and New York points is 16 cents per 100 pounds, to Boston and most New England

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points 18 cents. When this complaint was filed the ex-lake rate on wheat from Detroit, Port Huron, and similar points was  $12\frac{1}{2}$  cents per 100 pounds. It appears that since the filing of the complaint that rate from Detroit has been canceled, although still maintained by the Grand Trunk, Canadian Pacific and connections from Sarnia, Port Huron, and points north. This case will be considered upon the rates as they existed when the complaint was filed.

If the complainant brings in a carload of wheat from Duluth to Detroit and grinds that wheat into flour, he is compelled to pay on the flour and the by-product 16 cents per 100 pounds to New York points and 18 cents per 100 pounds to New England, while his competitor who brings in a similar carload from Duluth to Detroit or who buys at Detroit a carload which has been brought there by water can ship his grain upon a rate of  $12\frac{1}{2}$  cents and mill it in transit by the payment of one-half cent penalty. His competitor has therefore secured the transportation of his product for 3 cents per 100 pounds less if to a New York point and for 5 cents per 100 pounds less if to a New England point. It is this adjustment of rates which the complainant attacks.

The complainant grinds approximately 1,500,000 bushels of wheat per year. About one-half of his supply is winter wheat, which he obtains from Michigan, Ohio, Indiana, and various points west of Chicago and all of which reaches his mill by rail. The other half is spring wheat, which he might also bring in by rail, but which in point of fact he does bring by water from Duluth for the reason that the cost of transportation to Detroit by water is less than by rail.

He produces from this wheat about 300,000 barrels of flour, which is disposed of one-third locally, one-third to various southern destinations, and the remaining one-third to New York and New England points.

The complainant enjoys at Detroit the milling-in-transit privilege upon all-rail grain; that is to say, he can, upon the payment of a stipulated fee, mill the grain and send on the product at a rate equivalent to the rate upon the product from the point of origin to the point of destination. In shipping out the product no attempt is made to ascertain whether the flour shipped was manufactured from the wheat which it is supposed to represent. The complainant, upon the production of an expense bill showing the movement of a certain number of pounds of wheat into his mill, is allowed to ship out an equal number of pounds of product under the transit privilege.

The wheat which the complainant obtains by rail and that which he obtains by water is taken into and ground in the same mill, and the record shows that the different kinds of wheat are mixed in the grinding so that the flour when produced is not exclusively from

either the wheat brought in by rail or that brought in by water, but is a combination of the two. In shipping out the wheat no attempt is made to distinguish between flour ground from water-borne wheat and that ground from rail wheat.

The rate on flour from Chicago to New England points at the present time is 18.7 cents. The complainant can therefore buy wheat in Chicago, ship it to his mill at Detroit, and send on the product at a total through rate from Chicago of 18.7 cents, plus a milling in transit penalty. The local rate on wheat from Chicago to Detroit is 6 cents per 100 pounds. The complainant may ship in a carload of wheat from Chicago, sell the flour made from that wheat in Detroit, and ship out upon the billing a carload of flour manufactured from wheat brought in from Duluth by water. In this event he would pay not 18 cents, the local rate from Detroit to New England, but 12.7 cents.

It will be seen that whether the complainant actually pays the local rate upon the flour to New York or New England points depends entirely upon whether he has or has not billing against which this flour can be sent forward, and this in turn depends upon the amount of his local consumption as compared with the total amount of his business. The traffic manager of the complainant testified upon the first hearing that the actual rate paid by the complainant to New England points was not 17 cents, which was the rate then in force, but between 13 and 14 cents.

For the purpose of ascertaining just what this average rate was, the defendants were required to furnish a statement showing for four months the shipments of the complainant to New York and New England points and the rate actually paid. The statement filed shows the shipments, and also shows whether the rate paid was a local rate or a transit rate, but does not show in case of the transit rate the point of origin, and it is therefore impossible to determine what the balance of the rate from Detroit would have been.

From these lists it appears that during the period covered 348 cars were shipped, on 47 of which the local rates were paid to New York points and on 34 to New England points, while 263 cars were forwarded under transit billing. There were four shipments to points other than New York and New England. This indicates that upon the bulk of his shipments the complainant obtains the benefit of a transit rate, but that on a substantial portion he is compelled to pay the local rate.

The defendants justify their rates by the plea of competitive necessity. The circumstances under which this lake traffic is conducted are well understood. Grain originating south and west of Chicago is transported by rail to some lake port like Duluth, Chicago, or Milwaukee. From thence it can be taken by water through

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the Great Lakes and the St. Lawrence River to Montreal for export, or by canal from Buffalo to New York. Generally it goes to Buffalo or Erie and from thence by rail to destination.

It is evident that the advantages of transportation, cost being the principal element, must be substantially equal by all routes. If the railroads are to handle this traffic from Buffalo, they must establish such a rate as taken in connection with the cost of transportation up to Buffalo will equal the all-water rates to Montreal and New York. In the past what are known as ex-lake rates have been applied from Buffalo which were lower than the local rates, and which were lower than the rates on flour. At the present time the rate from Buffalo on flour and on ex-lake grain is substantially the same.

This wheat in passing by water from Duluth or Chicago to Buffalo goes past Detroit. It may be unloaded at Detroit and taken from thence to destination by rail, but in order to induce this movement the rail rate from Detroit can not be materially higher than from Buffalo, since the water rate from the lake port to Detroit is seldom lower and frequently higher than to Buffalo. This ex-lake rate of the defendants which is under attack has been established for the purpose of inducing the movement of this grain through ports like Detroit, Sarnia, Port Huron, etc. The quantity of grain now handled through these ports upon these rates is comparatively small and the rates could not be substantially advanced.

It is urged that it would not benefit the complainant if these rates were to be altogether withdrawn or if the privilege of milling in transit at eastern points were not to be granted, since the eastern miller would purchase his supplies at Buffalo, from which point the rate on flour and grain is identical.

These contentions of the defendants are in the main well founded. The rates are competitive and could not be made higher. The complainant would not be benefited if the rates on wheat were entirely withdrawn, nor would he probably derive any benefit from eliminating from those rates the milling-in-transit privilege. The result would be that the eastern miller would obtain his wheat at the same price through Buffalo, with the milling-in-transit privilege.

The complainant insists that the defendants should be required to maintain from Detroit the same rates upon flour as upon wheat, and in support of this cites the opinion of the Commission in several cases to that effect. It is true that we have said that in this eastern territory parity of rates between wheat and its products has generally been maintained in the past and that this rule ought ordinarily to be observed; but we have never considered what effect competitive conditions like those here presented might have.

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What the complainant really asks is not that the Commission order in a rate of 12.5 cents upon flour and other wheat products from Detroit, but that we require the defendants to apply that rate to the products of wheat brought in by water and ground at Detroit. He insists that whatever rate they apply to wheat from a certain source should be applied to flour produced from that wheat. If we regard the transportation from Detroit to destination as really a part of a through transportation from point at which the wheat originates to which, for that reason, a lower rate than the local may be applied, then what the complainant asks for is a milling-in-transit privilege. If Detroit be regarded, with respect to this service, as the point of origin and the lower rate from Detroit be justified by looking to the competitive conditions in territory in which the wheat is grown, then the complainant urges that we should consider those same conditions in determining the rate upon the product.

There is very great force in the contention of the complainant, and unless that contention is sustained it is evident that mills located at the end of the water and the beginning of rail transportation can not grind in competition with those upon either side. In *Hecker, Jones, Jewell Milling Co. v. B. & O. R. R. Co.*, 14 I. C. C. Rep., 356, the Commission held that if carriers leading to the seaboard granted a milling-in-transit rate to flour for export they should accord the same rate upon wheat brought to the port of export and there ground for export. This order was sustained by the circuit court of the United States upon proceedings brought by the carriers to enjoin its enforcement. 168 Fed. Rep., 131.

We have here the reverse of that proposition. The Hecker-Jones mill was situated at the end of the rail haul and at the beginning of the water haul. The mill of the complainant is located at the end of the water and the beginning of the rail haul, but in each case the discrimination is the same, and the reason which calls for the allowance of a milling-in-transit rate in that case applies with equal force to the one before us.

While, however, the two cases can not be distinguished in principle, there are very important practical differences. In the *Hecker-Jones* case it was possible to keep the wheat for export entirely separate from that ground for domestic use. At the present time under that order the Hecker-Jones Company in fact keeps the grain for export milling and the product of that grain entirely distinct from that which is used for home consumption. In the present case the wheat which the complainant brings in by water is mingled with that which he brings in by rail, the two being ground together and therefore inextricably blended in the barrel of flour. The method of the complainant's business is such that it is impossible to distinguish

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the flour produced from water-borne wheat and that produced from rail wheat and it is therefore impossible to deal with this case in the same manner in which we did with the *Hecker-Jones case*.

Moreover, while in theory this complainant has no transit privilege upon his water grain, in point of fact he enjoys to a very marked extent that privilege. Owing to the large local consumption which the complainant supplies and to the excess of billing which he thereby has, a certain part of the flour produced from this wheat brought in by water is actually shipped out by rail. The testimony shows that under the transit privilege enjoyed by the complainant the rate actually paid is not the local rate but from 2 to 4 cents less than the local rate.

Inasmuch, therefore, as it is practically impossible, owing to the manner in which his business is conducted, to apply at Detroit the milling-in-transit privilege to water-borne grain ground by the complainant, and in view of the further fact, although this may not be of much importance, that, in actual practice, he does enjoy, to an extent, the transit privilege, we are of the opinion that this discrimination, which exists, ought not to be pronounced undue, and that the carriers should not be required to desist from maintaining the ex-lake rate upon wheat from Detroit and competitive ports to the north or from applying the milling-in-transit privilege upon that wheat at eastern points. No opinion is expressed as to the legality of the ex-lake rate, which is lower than the local rate, that question not having been discussed or considered.

One further question made by the complainant remains to be disposed of.

In the past Chicago has enjoyed a great variety of transit rates and privileges, but beginning last February these transit rates were for the most part canceled by the substitution of specific in-and-out charges. To-day, with some exceptions, the rate from Chicago is the same irrespective of the point at which the traffic originates. Thus the flour rate to New England is 18.7 cents, the wheat rate is 18 cents, and these rates are paid by the miller or the grain shipper from Chicago irrespective of the point at which the wheat originates.

Ordinarily Detroit takes a rate 78 per cent of that from Chicago. There is in effect at the present time a so-called local rate from Chicago to New York, which serves as the basis or standard for other grain and grain-product rates from Central Freight Association territory, and the flour rate of 16 cents from Detroit to New York is 78 per cent of this flour rate. The complainant insists that he should be accorded at Detroit a rate which is 78 per cent, not of the local rate from Chicago upon which no traffic moves, but of the specific rate which actually carries the business.

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Owing to the fact that grain could be shipped into and out of Chicago by both rail and water, and to the large local consumption of grain at Chicago, many improper practices grew up in the way of substitution of tonnage. It was for the purpose of preventing these practices that the specific rate was substituted for the transit rate. In obtaining a specific rate lower than the local, Chicago has given up the transit privilege it formerly enjoyed.

It is recognized by all as impossible to apply specific in-and-out rates at all interior points. This can possibly be done at certain markets, but if most places are to mill in competition with these markets it must be under some milling-in-transit privilege which shall be fairly equivalent to the in-and-out rate.

Rates have been adjusted with great care so that Chicago will get by its specific rate no unfair advantage over the interior point which has no specific rate but which operates under the transit privilege. So far as this case shows, and so far as complainant could suggest, it is impossible for the miller at Chicago to bring grain to Chicago by rail, mill it at Chicago, and send on the product under the specific rate at a lower transportation charge than the grain can be taken from the same point of origin, milled at an interior point in transit, and sent to destination. The complainant does not claim that Chicago has any advantage over Detroit when the grain is handled by rail, but he does claim that it possesses a kind of advantage where the transportation is by water.

The cost of transporting wheat from Duluth to Chicago and Detroit was said to be the same. The miller at Chicago buys his wheat at Duluth, transports it by water to Chicago, and grinds it into flour. The miller at Detroit does the same. Now, the Chicago miller, although situated nearly 300 miles farther from New England than Detroit, pays only seven-tenths of a cent per 100 pounds more for the transportation of his flour. This, the complainant insists, is depriving Detroit of its advantageous location. The complainant contends that since he can ship wheat to Detroit by water he should be given the benefit of that advantage.

If Detroit and Chicago were the only points to be considered, it is possible that the claim of the complainant would merit favorable action. We must, however, comprehend the entire situation and inquire what would be the effect upon other localities as well as Detroit and whether, upon the whole, Detroit is unjustly treated.

It is by no means certain that to apply to Detroit a specific rate like that asked for would benefit the complainant. Seventy-eight per cent of 18.7 cents, the present rate from Chicago to New England, is almost exactly 14.5 cents. The local rate on grain from Chicago to Detroit is 6 cents. If, therefore, the complainant were to pay 6 cents

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into Detroit upon his grain and 14.5 cents upon his product out, he would pay a total of 20.5 cents, which at the present rate, if he buys wheat in Chicago, would be only 18.7 cents plus the milling-in-transit penalty. The testimony shows that during the year 1908 the complainant only paid an average rate to New York and New England points of between 13 and 14 cents. While the rate has since then been advanced 1 cent per 100 pounds, and while the specific rate from Chicago may produce some effect upon the situation, it is evident that the rate of the complainant to New England points will still be, on the average, materially lower than the local rate, and that it may not much, if any, exceed the specific rate for which he asks. The business of the complainant is prosperous and increasing; and the effect of this rate adjustment does not appear to have been, on the whole, unjust to him.

This question ought not, however, to be disposed of with reference to the complainant alone, but rather with reference to Detroit as a locality. The defendants assert that to establish the specific rate asked for at Detroit would play havoc with all their rates at interior points, and there seems to be no good reason why, if a specific rate is established at Detroit, similar rates should not also be established from Toledo, Sandusky, Erie, and other lake ports. The effect of this might be to break down rates from interior points, and would probably result in this or a more serious discrimination in favor of those lake ports as against interior points than that which now exists against Detroit.

If transit privileges are to be enjoyed, certainly if, as a condition of continuing those privileges, it is found necessary to establish specific in and out rates at primary markets like Chicago, there must of necessity be more or less discrimination. Detroit under the present adjustment stands upon the basis of an interior point; it is deprived of any benefit from its advantage upon the lake, except in so far as it obtains that advantage, to a limited extent, under the transit privileges actually enjoyed by millers like the complainant. Detroit is not favorably situated as a lake milling point, for the reason that the rate upon its grain from Duluth is as high as to Buffalo, while it has no lake-and-rail rate upon its flour to the east like that from Duluth. Still, it would be our duty to give it the benefit of its water transportation if we could devise any way in which that could be accomplished without serious interference with rates in other quarters. We can suggest no improvement in the present situation. Whatever discrimination the complainant suffers, if any, is necessary and can not be pronounced undue.

The Commission now has under investigation the substitution of tonnage in transit, and it is possible that as a result of this investi-

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gation either by action of the Commission or the defendants the complainant may be deprived of the transit privilege which he now enjoys and under which he does in fact send along flour which consists in part of wheat brought in by water. It is also uncertain exactly what the effect of the new system of specific rates from Chicago may be. While, as already stated, the testimony showed that the complainant blended in the grinding wheat brought in by rail with that brought in by water, the complainant, upon the last hearing, testified that it might be possible to keep the product of the water-borne grain distinct. If such changes should be made in the transit privileges of the complainant as to prevent his present method of business, the opportunity should perhaps be given him to show whether, under a different method, the identity of the lake grain can be preserved, in which event the defendants ought perhaps to be required to accord to him at Detroit the same milling-in-transit privilege which we required of the carriers at New York.

The complaint will be dismissed.

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No. 3055.

LEBANON PAPER COMPANY

v.

ELGIN, JOLIET &amp; EASTERN RAILWAY COMPANY ET AL.

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*Submitted March 28, 1910. Decided June 2, 1910.*

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Reparation awarded for the collection of unreasonable charges accruing through the misrouting of a carload of alum shipped from Chicago Heights, Ill., to Lebanon, Oreg.

*J. O. Bracken* for complainant.

*Guy V. Shoup* for defendants.

#### REPORT OF THE COMMISSION.

**LANE, Commissioner:**

This complaint is based upon the shipment of a carload of alum, 44,000 pounds in weight, shipped via the lines of the defendants from Chicago Heights, Ill., to Lebanon, Oreg., on June 29, 1906. The claim was originally brought to the attention of the Commission on February 21, 1908, and is therefore not barred by the statute of limitations.

Complainant caused this shipment to be delivered to the Elgin, Joliet & Eastern Railway Company, with the following routing instructions: "Chicago, Rock Island & Pacific, care of Union Pacific, care of Southern Pacific Company." Shipment moved via the Sacramento gateway of the Southern Pacific Company, and a total charge of \$827.20 was collected. There appears to have been a straight overcharge of \$376.20, which has already been refunded.

Lebanon is situated on the Southern Pacific line 87 miles south of Portland and 601 miles north of Sacramento. The car might have moved through either Portland or Sacramento, the rate via Portland being 87 cents while that via Sacramento was \$1.025. The movement was actually made via Sacramento, the \$1.025 rate being charged.

The complainant contends that the routing instructions given did not require the defendants to move the car by either Sacramento or Portland, but that it was their duty to send it via the cheaper route. This contention is borne out by the following telegrams interchanged

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between the Commission and Mr. J. C. Stubbs, traffic director of the Southern Pacific Company.

WASHINGTON, D. C., May 5, 1910.

J. C. STUBBS,

*Southern Pacific, Chicago, Ill.*

When you receive traffic at Omaha destined to a Southern Pacific point in the Willamette Valley, to which there is no through rate over any line, and it is routed by the shipper Union Pacific and Southern Pacific, does it move via Sacramento or Portland?

E. A. MOSELEY, *Secretary.*

CHICAGO, ILL., May 5.

E. A. MOSELEY,

*Secretary Interstate Commerce Commission, Washington, D. C.*

Your wire date. Under circumstances detailed the traffic would be sent via Portland, the combination via Portland being less than via Sacramento.

J. C. STUBBS.

We find that under the routing instructions given, it was the duty of the defendants to move this shipment via the Portland gateway, through which the lower rate applied. An order will be entered requiring the Union Pacific Railroad Company to refund to the complainant \$68.20, with interest from July 30, 1906.

18 I. C. C. Rep.

No. 2962.

NATIONAL PETROLEUM ASSOCIATION ET AL.  
v.  
MISSOURI PACIFIC RAILWAY COMPANY ET AL.

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No. 2971.

NATIONAL REFINING COMPANY  
v.  
MISSOURI PACIFIC RAILWAY COMPANY.

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*Submitted May 5, 1910. Decided June 2, 1910.*

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Present rates on petroleum and its products from Coffeyville, Kans., to Memphis, Tenn., and Omaha, Nebr., found unreasonable and lower rates prescribed for the future.

*C. D. Chamberlin* for complainants.

*James C. Jeffery* and *H. J. Campbell* for defendants.

#### REPORT OF THE COMMISSION.

##### **LANE, Commissioner:**

These complaints involve the rates on petroleum and its products from Coffeyville, Kans., to Memphis, Tenn., and Omaha, Nebr.

A glance at the map will show that Coffeyville is in the southeastern portion of Kansas close to the border of Oklahoma on the south and Missouri on the east. It is one of the largest oil refining points in the middle west. The outlet for this oil at the present time is chiefly to the south and to the west. The purpose of these proceedings is to give complainants access to the markets of the southeast and of the north, to the former through the Memphis gateway, and to the latter through Omaha. The record is replete with

suggestion that these two great fields of consumption are at present closed to the Coffeyville refineries by reason of preferential rates made to the refineries at Whiting and other northern points; but such preference is not chargeable against the defendants here because they do not participate in any of the rates by which these northern refineries reach Memphis or Omaha at an advantage over the Coffeyville product.

There appears to be at present, and has been for a year past, active competition between the carriers leading from northern refining points to Memphis, with the result that while the rate from Coffeyville to Memphis, a distance of 469 miles, is 23 cents per 100 pounds, the rate from Whiting, Ind., for 542 miles, is 16 cents, and from Wood River, Ill., 328 miles, 6 cents. These rates appear to have been met by carriers moving northward from the far south, the rate from Baton Rouge, La., 366 miles, to Memphis being 8 cents. A more complete showing of this whole situation is presented in the following table:

To Memphis, from—	Distance.	Rate per 100 pounds.	Rate per ton per mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
Coffeyville.....	469	23	0.981
East St. Louis.....	305	6	.396
Wood River.....	328	6	.366
Whiting.....	528	16	.606
Louisville.....	391	6	.307
Cincinnati.....	505	7.5	.295
Fayette.....	478	7.5	.314
Oil City.....	936	21.5	.489
Baton Rouge.....	366	8	.437
Casey, Ill.....	346	12.5	.723
Cleveland, Ohio.....	740	19	.514
Olean, N. Y.....	971	21.5	.443
Houston, Tex.....	570	20	.702

If one leg of a compass is placed on Coffeyville and the other leg at Memphis and an arc is drawn to the northward, it will be seen that St. Louis and Omaha are slightly inside this arc. There are direct lines from Coffeyville to each one of these points. The rate from Coffeyville to Omaha (362 miles) is 22 cents, to St. Louis (418 miles) 17 cents, and to Memphis (469 miles) 23 cents. The rate to Memphis is based upon the rate to St. Louis plus a 6-cent rate down the river. The rate to Omaha is based on Kansas City, the differential over the Kansas City rate being 9 cents per 100 pounds. Near Kansas City, as is well known, is the Sugar Creek plant of the Standard Oil Company, and Sugar Creek enjoys the same rate to Memphis as is extended to Coffeyville and a lower rate to Omaha.

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The situation of Omaha with reference to the various sources of oil supply may be grasped from a consideration of the following table of comparative rates from various points to that city:

To Omaha, from—	Distance.	Rate per 100 pounds.	Rate per ton per mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
Coffeyville, Kans.....	262	22	1.215
Sugar Creek, Mo.....	205	13	1.268
Kansas City, Mo.....	195	13	1.333
St. Louis, Mo.....	403	19.3	.968
Wood River, Ill.....	434	19.03	.875
Beaumont, Tex.....	965	42.5	.881
Whiting, Ind.....	492	24.3	.987
Chelsoe, Okla.....	406	24	1.182
Glenpool, Okla.....	483	24	.993

It is not possible for the Commission to order rates out of Coffeyville to Memphis which will meet those voluntarily established by the carriers east of the Mississippi River, nor is this asked for by complainants. The situation which the Commission must meet would be quite different if the Missouri Pacific were a party to any of these lower rates. We see no reason, however, why the Memphis rate should be based upon a haul to St. Louis which is not made. We are aware that the northern rates are to some extent blanketed to points north of Kansas City; but if Sugar Creek is given the advantage of her proximity to the markets of Omaha and the north, Coffeyville should be given the advantage of her proximity to the markets of Memphis and the south. It is our opinion that the rate on petroleum and its products in carloads should not exceed 19 cents per 100 pounds from Coffeyville to Memphis, and the rate from Coffeyville to Omaha should not exceed 17 cents per 100 pounds. It will be so ordered.

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No. 2808.

## WINTERS METALLIC PAINT COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY  
ET AL.

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Submitted January 13, 1910. Decided June 2, 1910.

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Rates assessed and collected for the transportation of ground iron ore from Iron Ridge Junction, Wis., to Spokane, Wash., and Denver, Colo., found unreasonable. Reparation awarded.

*Carl Whitehead and Albert L. Vogl* for complainant.

*M. L. Bell and Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

*W. W. Cotton, F. C. Dillard, and C. C. Dorsey* for Oregon Railroad & Navigation Company.

## REPORT OF THE COMMISSION.

## LANE, Commissioner:

The complainant on June 22, 1909, shipped a carload of ground iron ore from Iron Ridge Junction, Wis., to Spokane, Wash., weighing 60,000 pounds, upon which there was charged and collected the sum of \$624, based upon a rate of \$1.04 per 100 pounds, constructed of a rate of 60 cents to Portland, Oreg., and a rate of 44 cents back to Spokane. This was during the period that the defendants were readjusting their rates to Spokane in pursuance of an order of the Commission, and on June 23, 1909, one day after the shipment moved, the rate was reduced to 60 cents per 100 pounds to make it equal to the Portland rate. The complainant, who resided at Denver, Colo., gave instructions to his shipping clerk at Iron Ridge Junction, who was as well an employee of the initial carrier, to hold the shipment until a time when the 60-cent rate would be available. But through inadvertence it was billed out one day previous. The complainant alleges that the rate collected on the shipment was, under the circumstances, unreasonable in so far as it exceeded 60 cents, and claims reparation upon that rate, amounting to \$264. The defendants admit this and are willing to make the refund as claimed.

. 18 I. C. C. Rep.

We are of opinion that the rate charged was unreasonable, and an order will be made awarding reparation upon such shipment, with interest from July 15, 1909, and further that no higher rate than 60 cents per 100 pounds upon ground iron ore from Iron Ridge Junction, Wis., to Spokane, Wash., shall be imposed for the period of two years.

Furthermore, complainant on July 17, 1909, shipped a carload of ground iron ore from Iron Ridge Junction, Wis., to Denver, Colo., weighing 50,000 pounds, upon which there was charged and collected the sum of \$212.50, based upon a rate of \$9.52 per gross ton, minimum weight 50,000 pounds. The complainant asks reparation in the amount of \$42.32, based upon a rate of \$7.62 per gross ton in effect immediately prior to January 18, 1909, at which time the rate was advanced to the amount upon which the charges were based, and also prays that the rate of \$7.62 per gross ton be restored. The defendants assert that in *Winters Metallic Paint Co. v. C., M. & St. P. Ry. Co.*, 16 I. C. C. Rep., 587, it was held that ground iron ore from the same point of origin to points in Western Trunk Line Association territory, which does not include Denver, was entitled to Class D rates in the Western Classification. The Class D rate to Denver is 53½ cents per 100 pounds, while the present commodity rate on ground iron ore is 42½ cents per 100 pounds (\$9.52 per gross ton), 11 cents lower.

But it appears that the advance in the rate complained of equaled 25 per cent, and the reason for this decided increase, as given by the carriers, was that more revenue was needed to defray the cost of operating expenses, which had recently increased. We have investigated slightly this defense. The following statement shows ratios of increase in operating revenues and operating expenses as reported by the defendants for the years ending June 30, 1907, 1908, and 1909, over their returns for the year ending June 30, 1906:

	Ratio of Increase over 1906.		
	1907.	1908.	1909.
<b>Chicago, Milwaukee &amp; St. Paul Railway Company:</b>	<i>Per cent.</i>	<i>Per cent.</i>	<i>Per cent.</i>
Operating revenues.....	9.24	2.38	7.71
Operating expenses.....	13.46	6.40	10.98
<b>Chicago, Rock Island &amp; Pacific Railway Company:</b>			
Operating revenues.....	13.53	11.62	17.31
Operating expenses.....	12.76	15.94	16.87

From this statement it appears that the percentage of increase in operating revenues over the Rock Island road has been greater since 1906 than the percentage of increase in operating expenses, while as to the Milwaukee road the reverse is true. Figures recently published 18 I. C. C. Rep.

by the railroads through their bureau of railway news and statistics show that comparing the year 1909 with the year 1899 the operating expenses of the railroads of the United States have during ten years increased 1.35 per cent compared with gross earnings. In 1899 the operating expenses of all roads are given as 65.24 per cent of the gross earnings, while in 1909 the per cent is 66.12 of gross earnings. The compensation of labor with relation to operating expenses in this same period increased 1.65 per cent, and the ratio of compensation of labor to gross earnings, which for 1909 was 41 per cent, ten years ago was 39.81 per cent. Whatever may be said as to these figures, they certainly do not justify an increase in rates of 25 per cent upon a low-grade commodity.

The defendants, upon request, promised to furnish a list of rates applicable to other commodities advanced at the same time as the rate on ground iron ore, which would share in offsetting the increased operating expenses, but for some reason the list has not been furnished. There is a rate of 42½ cents applied on ground iron ore from Chicago to Denver, which is the rate from Iron Ridge Junction to Denver, and a comparison of this rate with other rates between Chicago and Denver applied upon commodities fairly analogous shows that at the present time there are maintained rates on ground arsenic of 25 cents, paving cement 35 cents, foundry facings 36½ cents, lime 32 cents, ground limestone 32 cents, crude magnesite 32½ cents, and whiting 34½ cents.

We are of the opinion that 37½ cents per 100 pounds was at the time of the movement in question a reasonable rate and will be for the future. Reparation is awarded in the amount of \$25, with interest from August 4, 1909. The minimum weight at the time of the shipment was 50,000 pounds, which was also the weight of the shipment, but since the shipment moved the defendants have lowered it to 44,800 pounds, which we think is a proper minimum to be applied for the future.

Orders will be entered in accordance with these findings.

18 I. C. C. Rep.

No. 2942.

QUAMMEN & AUSTAD LUMBER COMPANY  
v.  
CHICAGO GREAT WESTERN RAILROAD COMPANY ET AL.

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*Submitted April 21, 1910. Decided June 2, 1910.*

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The mere fact that a lower rate is now charged does not warrant finding that former higher rate was unreasonable. Reparation denied.

*Leonard Brisley* for complainant.

*A. G. Briggs* for Chicago Great Western Railroad Company.

*F. G. Wright* for Chicago, Milwaukee & St. Paul Railway Company and Chicago, Milwaukee & Puget Sound Railway Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

This complaint filed November 5, 1909, involves a claim for reparation in the sum of \$40.05 on account of alleged unreasonable charge exacted on a shipment of three carloads, each containing 375 bags of stucco, from Gypsum, Iowa, to Lemmon, S. Dak., during August and September, 1908, and April, 1909.

No witnesses were called upon either side. Complainant submits the case by comparing the rate charged, which was 41 cents, made up of the local rate of 10 cents of the Chicago Great Western from Gypsum to Minnesota Transfer and 31 cents from thence to destination, with the subsequently published joint rate from Gypsum to Lemmon of 36.55 cents, claiming that the rate charged was excessive to the extent that it exceeded the subsequently published joint rate.

The Chicago Great Western Railroad Company by its answer and at the hearing raised the question as to whether it is a proper defendant. It claims that at the time the shipments moved the property now owned by the Chicago Great Western Railroad Company was owned by the Chicago Great Western Railway Company and prays that the case be dismissed as to it.

No expense bills or evidence of any kind that the shipments moved have been filed and no evidence was presented as to the reason—  
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ableness of the rate, except the fact that a lower rate was subsequently published. From a division sheet of the Chicago Great Western, filed subsequent to the hearing, it appears that that company receives its local rate of 10 cents from Gypsum to Minnesota Transfer under the joint rate, the same as it received when there was no joint rate. It is evident, therefore, that there has been no reduction on the part of that company in the revenue which it receives for the transportation of this commodity between the points named, but that all the reduction that has been made has been by the other defendants.

In the absence of testimony and of a stipulation on the part of defendants, the Commission will not hold that the rate charged was unreasonable. The Commission has held in numerous cases that the mere fact of a lower rate being made effective by a carrier did not warrant finding that the former rate was unreasonable and the granting of reparation thereon. That is all we have before us in this case—that a lower rate is now charged that was effective at the time the shipments moved. The complaint will be dismissed.

18 I. C. C. Rep.

No. 3067.

HIGHLAND IRON &amp; STEEL COMPANY

v.

VANDALIA RAILROAD COMPANY ET AL.

*Submitted April 23, 1910. Decided June 2, 1910.*

Rates on bar, boiler, band, and rod iron and steel from Terre Haute, Ind., to Louisville, Ky., and Cincinnati and Dayton, Ohio, not found unlawful.

*Miller, Shirley & Miller*, by C. C. Shirley, for complainant.

*John G. Williams* for Vandalia Railroad Company and Pittsburg, Cincinnati, Chicago & St. Louis Railway Company.

*Edward Barton* for Baltimore & Ohio Southwestern Railroad Company.

*O. E. Butterfield* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company and Cincinnati Northern Railway Company.

*H. C. McLellen* for Louisville & Nashville Railroad Company.

## REPORT OF THE COMMISSION.

LANE, Commissioner:

This petition involves rates on bar, boiler, band, and rod iron and steel from Terre Haute, Ind., to Louisville, Ky., and Cincinnati and Dayton, Ohio. Complainant's plant is situated at Terre Haute, and its contention is that the rates on its products to the points named are unreasonable in themselves and place Terre Haute iron and steel products at a disadvantage in reaching Louisville, Cincinnati, and Dayton as against the same products reaching those cities from Pittsburg, Cleveland, Chicago, St. Louis, Knoxville, Tenn., and New Albany, Ind. Whether the latter charge is true may be judged from a comparison of the present carload rates (minimum 36,000 pounds) from all of these points to the three markets under consideration:

## TO DAYTON.

From—	Distance.	Rate.	Rate per ton per mile.	Revenue.	
				Per car.	Per car-mile.
	<i>Miles.</i>	<i>Cents.</i>			
Pittsburg.....	262	14	\$0.0106	\$50.40	\$0.19
Cleveland.....	188	11½	.0120	41.40	.22
Chicago.....	267	14½	.0109	52.20	.30
New Albany.....	170	11½	.0135	41.40	.24
Knoxville.....	347	19½	.0110	70.20	.30
St. Louis.....	352	15	.0080	54.00	.15
Terre Haute.....	183	11½	.0126	41.40	.26

## TO CINCINNATI.

From—	Distance.	Rate.	Rate per ton per mile.	Revenue.	
				Per car.	Per car-mile.
	<i>Miles.</i>	<i>Cents.</i>			
Pittsburg.....	309	15	\$0.0097	\$54.00	\$0.17
Cleveland.....	245	13	.0161	46.80	.16
Chicago.....	284	15	.0106	54.00	.20
New Albany.....	114	10½	.0184	37.80	.22
Knoxville.....	291	12	.0082	43.20	.15
St. Louis.....	339	15	.0088	54.00	.16
Terre Haute.....	182	11½	.0127	41.40	.23

## TO LOUISVILLE.

Pittsburg.....	423	18	\$0.0085	\$64.80	\$0.15
Cleveland.....	355	16	.0090	57.60	.16
Chicago.....	304	16	.0105	57.60	.19
New Albany.....	64	4	.0123	14.40	.22
Knoxville.....	276	12	.0090	43.20	.16
St. Louis.....	274	15	.0124	54.00	.20
Terre Haute.....	163	11	.0135	39.60	.24

In 1901 iron and steel products carried a sixth class rating from Pittsburg, Cleveland, Youngstown, Chicago, and other points; in 1903 the rate from these cities was advanced 10 per cent above sixth class; in 1907 they were given a fifth class rating. This adjustment brings to light the interesting fact that during the last ten years rates upon iron and steel have been raised in this territory 20 per cent between producing and consuming points.

Up to 1907 it would appear that Terre Haute enjoyed under the adjustment then obtaining as between that and other producing points no advantage in reaching the markets of Cincinnati and Louisville, but in that year it was enabled to extend its markets into those cities and by the year 1909 had developed quite a business therein. This arose out of the fact that while in 1907 the rates from Terre Haute were advanced to fifth class for a short period that basis was soon abandoned by the carriers out of Terre Haute, who restored the 10 per cent above sixth class rates. Thus from June 1, 1907, up to August, 1909, Terre Haute enjoyed a relative advantage as against competing points which allowed her during that period to reach the new markets of Cincinnati and Louisville. Complaints were made to the eastern carriers of the inequity of this adjustment, and it would appear that influence was brought to bear upon the carriers leading out of Terre Haute to so increase their rates as to put that producing point upon the same relative basis as other points in the same territory. Up to August, 1909, the rates from Terre Haute to Louisville were 9½ cents per 100, to Cincinnati 9 cents, and to Dayton 10 cents. In August of last year these rates were advanced so that they became from Terre Haute to Louisville 12½ cents, to Cin-

18 I. C. C. Rep.

cinnati 11½ cents, and to Dayton 12 cents per 100 pounds. This complaint was brought in January of the present year, and in the following March the rates were voluntarily reduced by the carrier to the basis above set forth, viz, Terre Haute to Louisville 11 cents and Cincinnati and Dayton 11½ cents per 100 pounds. This adjustment, which is on the basis of the fifth class scale uniformly from all points of production, does not in our opinion violate those provisions of the act to regulate commerce prohibiting discrimination as between localities. The rates of 1909 justified the complaint; they were discriminatory and prejudicial to the industry at Terre Haute as against its competitors, but the change in rates made since the filing of the complaint seems to successfully avoid that charge.

Whether the rates themselves are unjust and unreasonable is another matter, and one upon which the record throws little light. Lower rates between industries for short hauls, and lower rates between water competitive points upon the Great Lakes, are to be found in the tariffs, but such rates have a justification peculiar to themselves. These articles in question have for many years been classified by the carriers under fifth class, but, as we have seen, have not borne the rates applicable to such class. While we do not look with favor upon an increase in rates, we regard with approval an effort on the part of the carriers to equalize rates as between localities, for the greatest wrongs under which the shippers of the country have suffered have been those arising out of discrimination and preference. The maintenance of lower rates out of Terre Haute for some years raises a strong presumption in their favor, but it is to be noted that such rates did not benefit the Terre Haute industry so far as the markets here concerned are involved until the complainant had an advantage over its competitors in reaching these markets in 1907. The complainant's case as to unreasonableness rests somewhat upon the fact that before establishing its plant at Terre Haute in 1902 it had an arrangement with the general freight agent of the Vandalia line as to certain agreed rates. A memorandum of this agreement was made at the time, from which it appeared that a rate was to be given to Chicago, South Bend, and Michigan City of 5 cents per 100 pounds; to East St. Louis of 4½ cents; to Dayton of 8 cents; the general freight agent saying at the time that these rates were considered fair, that they would be put into effect and maintained subject only to a general advance or decline in rates. "If there is a general advance, you will be advanced proportionately; if there is a reduction in rates, you will be reduced proportionately." It appears, however, that no business was done, upon the agreed rate, to Dayton, and no rates were agreed upon as to Louisville and Cincinnati. These rates being put in by the Vandalia, all of the roads running out of Terre Haute met them,  
18 L. C. C. Rep.



and general increases which were made in 1903 were not complained of. We have made such investigation as was practicable into the reasonableness of these rates and find no reason to conclude that they are unreasonable. Our investigation, however, has not extended into a general inquiry into the question of classification of these commodities.

An order of dismissal will be entered.

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No. 2905.

NATIONAL ROLLING MILL COMPANY

v.

BALTIMORE & OHIO SOUTHWESTERN RAILROAD  
COMPANY.

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*Submitted April 23, 1910. Decided June 2, 1910.*

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Complaint herein involving unreasonableness of rate on bar iron from Vincennes, Ind., to Louisville, Ky., is controlled by the conclusions reached in *Highland Steel & Iron Co. v. Vandalia R. R. Co.*, ante, p. 601, and must therefore be dismissed.

*Clarence B. Kessinger* and *S. N. Bradshaw* for complainant.  
*Edward Barton* for defendant.

#### REPORT OF THE COMMISSION.

##### BY THE COMMISSION:

The rate herein complained of as unreasonable is an advanced rate of 12½ cents per 100 pounds on bar iron in carloads from Vincennes, in the state of Indiana, to Louisville, in the state of Kentucky, established by the defendant and by competing lines on June 5, 1909, in connection with general increases in the rates on bar iron in that territory. For about four years prior to that date the rate from Vincennes to Louisville had been 9 cents, which was itself an advance of 1 cent over the previous rate. Since the submission of this complaint the advance in the rate from Vincennes has been modified by action, on March 15, 1910, to 10 cents per 100 pounds.

18 I. C. C. Rep.

The chief competitor of the complainant is located at Terre Haute, and is the complainant in *Highland Steel & Iron Co. v. Vandalia R. R. Co.*, 18 I. C. C. Rep., 601, in which our decision has just been announced. The present rate from that point to Louisville is 11 cents per 100 pounds, as compared to the complainant's present rate of 10 cents. In other words, the complainant now has a differential in its favor and against its chief competitor of 1 cent per 100 pounds. The rate from Terre Haute was formerly  $9\frac{1}{2}$  cents, when the rate from Vincennes was 9 cents. This readjustment disposes of any element of discrimination in the situation; and so far as the reasonableness of the Vincennes rate in and of itself is concerned the complaint is controlled by the conclusions reached in the case cited, and must therefore be dismissed. It will be so ordered.

18 I. C. C. Rep.



CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED  
REPORT DURING THE TIME COVERED BY THIS VOLUME.

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757. **ST. LOUIS HAY & GRAIN COMPANY v. MOBILE & OHIO RAILROAD COMPANY ET AL.**—Rates on hay from East St. Louis, Ill., to points in states south of Kentucky and Virginia and east of Mississippi River. *James W. Dye* for complainant. *Ed. Baxter, E. L. Russell, Fairfax Harrison, and Claudian B. Northrop* for defendants. May 10, 1910. Dismissed.

905. **NORTH CAROLINA CASE WORKERS' ASSOCIATION v. SOUTHERN RAILWAY COMPANY ET AL.**—Minimum carload weight on furniture from High Point, N. C., Danville, Va., and other points in North Carolina and Virginia, to San Francisco, Seattle, Portland, and other Pacific coast terminals. *W. G. Bradshaw* and *Robert H. McNeill* for complainant. *James T. Clark, L. F. Parker, J. G. Egan, C. M. Dawes, E. D. Hotchkiss, Edw. Barton, Wm. R. Begg, Ed. Baxter, Chas. W. Bunn, Wm. F. Herrin, P. F. Dunne, E. N. Clark, S. A. Lynde, A. P. Burgwin, C. N. Travous, Jas. C. Jeffery, Martin L. Clardy, E. B. Peirce, C. B. Northrop, John N. Baldwin, D. A. Chambers, Gardiner Lathrop, Robert Dunlap, Burton Hanson, James Hagerman, Joseph M. Bryson, P. L. Williams, L. F. Hackney, S. F. Andrews, Britton & Gray, Evans Brown and L. E. Payson* for defendants. April 12, 1910. Dismissed on motion of complainant.

1059. **ROBERT WATCHORN, UNITED STATES COMMISSIONER OF IMMIGRATION AT THE PORT OF NEW YORK, v. NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY ET AL.**—Fares for transporting immigrant passengers from New York and other Atlantic ports to inland destinations. *Henry L. Stimson* by *Henry A. Wise* for complainant. *Geo. Stuart Patterson, Geo. V. Massey, Jackson E. Reynolds, F. H. Janvier, Edw. W. Robbins, John G. Wilson, John B. Kerr, Geo. F. Brownell, C. F. Daly, W. S. Jenney, Chas. S. Pierce, Frank H. Platt, Herbert A. Taylor, F. J. Jerome, and Clyde Brown* for defendants. March 8, 1910. Dismissed for want of prosecution.

1128. **AMERICAN BANKERS' ASSOCIATION v. AMERICAN EXPRESS COMPANY ET AL.**—Issuance of money orders, etc., in competition with banks. *John S. Miller* and *George Packard* for complainant. *Stewart & Shearer, Wm. R. Begg, O'Brien, Boardman & Platt, Wm. W. Green, Chas. W. Stockton, L. C. Ledyard, J. L. Zimmerman, Francis F. Flagg, H. G. Waters, Chas. L. Loop, T. B. Harrison, John G.*

*Milburn, C. A. de Gersdorff, Frank H. Platt, Geo. W. Field, and J. L. Minnis* for defendants. June 2, 1910. Dismissed on motion of complainant.

1244. *H. C. WALLACE, ASSIGNEE, v. CHICAGO & NORTHWESTERN RAILWAY COMPANY ET AL.*—Terminal rates on cattle at Union Stock Yards, Chicago, Ill. *W. C. Strock* for complainant. *Geo. W. Seavers, Wm. R. Begg, E. B. Peirce, Hale Holden, Davis, Kellogg & Severance, S. A. Lynde, Ed. Baxter, G. E. Watson, Perkins Baxter, and Wm. Ellis* for defendants. May 27, 1910. Dismissed.

1250. *J. B. KENDRICK v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.*—Terminal rates on cattle at Union Stock Yards, Chicago, Ill. *J. B. Kendrick* for complainant in person. *Hale Holden* for defendant. March 8, 1910. Dismissed for want of prosecution.

1251. *KENDRICK & BURROWS v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.*—Terminal rates on cattle at Union Stock Yards, Chicago, Ill. *J. B. Kendrick* for complainant. *Hale Holden* for defendant. March 8, 1910. Dismissed for want of prosecution.

1255. *CHARLES J. HYSHAM v. CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY.*—Terminal rates on cattle at Union Stock Yards, Chicago, Ill. *Charles J. Hysham* for complainant in person. *Hale Holden* for defendant. March 8, 1910. Dismissed for want of prosecution.

1265. *THOMAS B. MCPHERSON v. CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY.*—Terminal rates on cattle at Chicago, Ill., from Wyoming, Montana, Nebraska, and Arizona. *Thomas B. McPherson* for complainant in person. *Hale Holden* for defendant. June 6, 1910. Dismissed for want of prosecution.

1302. *C. W. REEDER v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL.*—Bridge toll on passengers crossing Missouri River from Troy, Kans., to St. Joseph, Mo. *S. M. Brewster* for complainant. *E. B. Peirce* and *R. A. Brown* for defendants. June 6, 1910. Dismissed on motion of complainant.

1375. *GREATER DES MOINES COMMITTEE (INCORPORATED) v. MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY.*—Class and commodity rates between Des Moines, Iowa, and points in Minnesota, South Dakota, and Iowa. *N. T. Guernsey* for complainant. *Geo. W. Seavers* for defendant. May 2, 1910. Dismissed on motion of complainant.

1506. *JUDITH CATTLE COMPANY v. GREAT NORTHERN RAILWAY COMPANY ET AL.*—Terminal rates on cattle at Union Stock Yards, Chicago, Ill. *Henry N. Blake* for complainant. *Wm. R. Begg, Hale Holden, and Winston, Payne, Strawn & Shaw* for defendants. March 8, 1910. Dismissed for want of prosecution.

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1539. **BINDER'S BREWERY v. PENNSYLVANIA RAILROAD COMPANY.**—Construction of switch connection at complainant's brewery at Renovo, Pa. *Luke Binder* for complainant. *Geo. Stuart Patterson, Henry Wolf Bikle, and Geo. V. Massey* for defendant. April 11, 1910. Dismissed on motion of complainant.

1612. **H. W. JOYNES v. PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY.**—Delay in delivery of potatoes at Pittsburgh, Pa. *E. W. Stowe, L. K. and S. G. Porter and J. J. Foley* for complainant. *A. P. Burgwin and C. B. Fernald* for defendant. May 18, 1910. Dismissed, following No. 1611.

1639. **NATIONAL ZINC COMPANY v. ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.**—Rates on coal from Pittsburgh, Kans., coal district, to Bartlesville, Okla. *Otto Rinman* for complainant. *James Hagerman, Joseph M. Bryson, and E. B. Peirce* for defendants. March 4, 1910. Transferred to Special Docket No. 8877 for adjustment.

1725. **MERCHANTS FREIGHT BUREAU OF LITTLE ROCK, ARKANSAS v. ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ET AL.**—Class and commodity rates from St. Louis, East St. Louis, Cairo, Thebes, etc., to Little Rock, Ark. *A. R. Bragg* for complainant. *E. B. Peirce* for C. R. I. & P. Ry. Co. March 8, 1910. Dismissed on motion of complainant.

1758. **BERTHOLD & JENNINGS v. ATLANTIC COAST LINE RAILROAD COMPANY ET AL.**—Rates on lumber from Shellhorn, Ala., to Chicago, Ill. *C. P. Jennings* for complainant. *Ed. Baxter and S. F. Andrews* for A. C. L. R. R. Co. April 12, 1910. Transferred to Docket No. 698-707 for adjustment.

1915. **JOHN HEILMAN v. SOUTHERN RAILWAY COMPANY ET AL.**—Rates on lumber Del Rio, Tenn., to Philadelphia, Pa., and points north and west. *Mortimer C. Rhone* for complainant. *Chas. Heebner, Ed. Baxter, C. B. Northrop, Geo. Stuart Patterson, R. Walton Moore, and Frank W. Gwathmey* for defendants. April 5, 1910. Dismissed on motion of complainant; complaint satisfied.

1978. **STANDARD ASPHALT & RUBBER COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.**—Rates on asphalt from Independence, Kans., to Shawnee, Okla. *J. M. Swift* for complainant. November 1, 1909. Transferred to Special Docket No. 8203 for adjustment.

2147. **CHICAGO LUMBER & COAL COMPANY ET AL v. LESTER & OUACHITA VALLEY RAILROAD COMPANY ET AL.**—Rates on yellow pine lumber from points in Louisiana, west of Mississippi River and Arkansas, to points north of Ohio River, etc. *Worth E. Caylor and Wm. G. Wise* for complainant. *S. W. Moore, Fred H. Wood, Henry*

*Moore, Henry Moore, jr., S. H. West and Roy F. Britton* for defendants. April 1, 1910. Dismissed, following No. 1438.

2239. *AMERICAN CIRCULAR LOOM COMPANY v. DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY ET AL.*—Construction of switch connection. *E. L. McKernan* for complainant. *J. L. Seager, Edw. G. Thompson and Douglas Swift* for defendants. May 26, 1910. Dismissed for want of prosecution.

2474. *WILCKES MARTIN WILCKES COMPANY v. BALTIMORE & OHIO RAILROAD COMPANY ET AL.*—Refusal to establish joint through rates on carbon black from Harrisville, W. Va., to Camden, N. J. *L. Martin* for complainant. *M. K. Duty, Geo. E. Price, Geo. Stuart Patterson, and Wm. A. Parker* for defendants. March 30, 1910. Dismissed on motion of complainant; complaint satisfied.

2565. *J. ROSENBAUM GRAIN COMPANY v. MICHIGAN CENTRAL RAILROAD COMPANY.*—Refusal to allow complainant  $\frac{1}{4}$ ¢ per bushel for transferring grain through its elevator at Chicago, Ill. *Mayer, Meyer & Austrian* and *H. C. Bangs* for complainant. *Winston, Payne, Strawn & Shaw* for defendant. April 12, 1910. Dismissed; reparation \$171.28.

2580. *FOREST CITY FREIGHT BUREAU v. ANN ARBOR RAILROAD COMPANY ET AL.*—Classification of unglazed sash and doors from Defiance, Ohio. *Henry & Couse* for complainant. *John W. Loud, Wilson, Warren & Child, C. O. Hunter, B. A. Worthington, H. S. Noble, C. E. Dewey, E. D. Hotchkiss, Wilson & West, Bing S. Warren, Clarence Brown, Chas. A. Schmettau, Ed Baxter, C. B. Northrop, F. C. Baird, Goulder, Holding & Masten, Chas. Heebner, S. F. Andrews, E. G. Buckland, John B. Kerr, Edw. Colston, C. B. Fernald, W. A. Parker, H. A. Taylor, H. Murray Andrews, Clyde Brown, John H. Clarke, W. S. Horton, Ed A. Niel, Edgar H. Boles, E. B. Peirce, W. D. Holliday, John L. Seager and O. E. Butterfield* for defendants. April 5, 1910. Dismissed on motion of complainant.

2596. *PACIFIC LUMBER COMPANY v. DENVER & RIO GRANDE RAILROAD COMPANY ET AL.*—Rates on lumber from Oakland, Cal., to Denver, Colo. *J. O. Bracken* for complainant. *E. N. Clark, T. L. Philips, F. C. Dillard, P. F. Dunne, C. W. Durbrow, Wm. F. Herrin, and E. W. Camp* for defendants. April 1, 1910. Transferred to Special Docket No. 10385 for adjustment.

2597. *PACIFIC LUMBER COMPANY v. UNION PACIFIC RAILROAD COMPANY ET AL.*—Rates on lumber from San Francisco, Cal., to Denver, Colo. *J. O. Bracken* for complainant. *N. H. Loomis, F. C. Dillard, Wm. F. Herrin, P. F. Dunne and C. W. Durbrow* for defendants. April 1, 1910. Transferred to Special Docket No. 10385 for adjustment.

2598. *PACIFIC LUMBER COMPANY v. COLORADO & SOUTHERN RAILWAY COMPANY ET AL.*—Rates on lumber from San Francisco, Cal., to  
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Denver, Colo. *J. O. Bracken* for complainant. *E. N. Clark, T. L. Philips, E. E. Whitted, Robert H. Widdicombe, F. C. Dillard, P. F. Dunne, C. W. Durbrow, Wm. F. Herrin, and Henry T. Rogers* for defendants. April 1, 1910. Transferred to Special Docket No. 10385 for adjustment.

2613. *DIERKS LUMBER & COAL COMPANY v. KANSAS CITY SOUTHERN RAILWAY COMPANY*.—Misrouting carload of lumber from De Queen, Ark., to Scranton, Pa. *Kirkpatrick & Schwind* for complainant. *S. W. Moore* for defendant. April 14, 1910. Dismissed; reparation \$58.37.

2680. *PACIFIC LUMBER COMPANY v. WEST JERSEY & SEASHORE RAILROAD COMPANY ET AL.*—Rates on lumber from San Francisco, Cal., and other points to Coopers, N. J., and various other destinations, originating at Eureka, Cal. *J. O. Bracken* for complainant. *Wm. Ellis, Chas. B. Fernald, A. G. Briggs, G. W. Markham, Hawkins & Franklin, Chester M. Daves, E. B. Peirce, Robert Dunlap, T. J. Norton, E. N. Clark, T. L. Philips, F. C. Dillard, P. F. Dunne, C. W. Durbrow, Wm. F. Herrin, Henry Wolf Bikle, Geo. Stuart Patterson, Joseph F. Keany, R. A. Brown, Baker, Botts, Parker & Garwood, H. A. Taylor, and H. Murray Andrews* for defendants. April 1, 1910. Transferred to Special Docket No. 10385, for adjustment.

2681. *THE CHARLES NELSON COMPANY v. UNION PACIFIC RAILROAD COMPANY ET AL.*—Rates on lumber from Oakland, Cal., to Kansas City, Mo., originating at Eureka, Cal. *J. O. Bracken* for complainant. *Hale Holden, Wm. Ellis, F. C. Dillard, P. F. Dunne, C. W. Durbrow, W. F. Herrin, Spoonts, Thompson & Barwise, E. E. Whitted, R. H. Widdicombe, Winston, Payne, Strawn & Shaw, S. A. Lynde, Robert Dunlap, and T. J. Norton* for defendants. March 18, 1910. Transferred to Special Docket No. 10109, for adjustment.

2682. *HAMMOND LUMBER COMPANY v. MISSOURI, KANSAS & TEXAS RAILWAY COMPANY ET AL.*—Rates on lumber from California points to points outside said State. *J. O. Bracken* for complainant. *F. E. Learned, Wm. Ellis, Lewis E. Carr, E. N. Clark, T. L. Philips, James Hagerman, Joseph M. Bryson, E. L. Sargent, A. G. Briggs, G. W. Markham, E. E. Whitted, Hawkins & Franklin, Blewett Lee, John W. Loud, Geo. W. Seevers, John B. Kerr, Coke, Miller & Coke, John H. Clarke, E. B. Peirce, H. Murray Andrews, F. C. Dillard, P. F. Dunne, C. W. Durbrow, Wm. F. Herrin, C. B. Fernald, Joseph F. Keany, Henry Wolf Bikle, Geo. Stuart Patterson, R. A. Brown, Edw. W. Hyzer, Charles Heebner, R. H. Brown, Edgar H. Boles, S. A. Lynde, Martin L. Clardy, James C. Jeffery, H. A. Taylor, John W. Loud, Baker, Botts, Parker & Garwood, Wm. C. Coleman, O. E. Butterfield, and Clyde Brown* for defendants. March 19, 1910. Transferred to Special Docket No. 10227, for adjustment.

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2708. **REDWOOD MANUFACTURERS COMPANY v. MISSOURI PACIFIC RAILWAY COMPANY ET AL.**—Rates on lumber from California points to points in Missouri, Kansas, Illinois, Indiana, Oklahoma and various other points outside the State of California. *J. O. Bracken* for complainant. *C. M. Dawes, Wm. Ellis, Hawkins & Franklin, E. L. Sargent, A. G. Briggs, Geo. W. Markham, E. N. Clark, T. L. Philips, H. A. Taylor, H. Murray Andrews, E. E. Whitted, R. H. Widdicombe, E. B. Peirce, F. C. Dillard, P. F. Dunne, C. W. Durbrow, W. F. Herrin, R. A. Brown, H. T. Rogers, Baker, Botts, Parker & Garwood, James Hagerman, J. M. Bryson, Blewett Lee, Geo. W. Seevers, E. H. Boles, Amos Van Etten, Thos. Wilson, R. L. Kennedy, Edw. A. Rozier, S. A. Lynde, C. B. Fernald, M. L. Clardy, James C. Jeffery, John W. Loud, Winston, Payne, Strawn & Shaw, Charles Heebner, E. O. Grundy, Robert Dunlap, T. J. Norton, Wm. C. Coleman, and E. W. Beatty* for defendants. May 14, 1910. Transferred to Special Dockets Nos. 10386 and 11066, for adjustment.

2735. **THE STATE BOARD OF AGRICULTURE, FORESTRY & IMMIGRATION ET AL. v. KENTUCKY & INDIANA BRIDGE & RAILROAD COMPANY ET AL.**—Switching charges on live stock and dead freight at Louisville, Ky. *McChord, Hines & Norman* for complainants. *E. D. Hotchkiss*, for C. & O. Ry. Co. February 7, 1910. Dismissed on motion of complainants; complaint satisfied.

2741. **ROACH & MUSSER SASH & DOOR COMPANY v. PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL.**—Rates on glass and lumber, Eastern points to Muscatine, Iowa, as compared with rates from the West. *Guernsey, Parker & Miller and Arthur E. Rippey* for complainant. *Stearns, Miller & Elkhart, Geo. W. Seevers, Geo. Reeder, E. B. Peirce, C. B. Fernald, Wm. A. Parker, Wm. Ellis, M. L. Bell, and Wallace T. Hughes* for defendants. April 14, 1910. Dismissed; complaint satisfied.

2802. **GEORGE J. KINDEL v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.**—Rates on all classes and certain commodity rates from Galveston and Texas City, Tex., to Denver, Colo. *Whitehead and Vogl* for complainant. *H. B. Moore, E. B. Peirce, E. E. Whitted, Robert Dunlap, T. J. Norton, and Spooner, Thompson & Barwise* for defendants. March 30, 1910. Dismissed on motion of complainant.

2803. **THE BABCOCK & WILCOX COMPANY v. CENTRAL RAILROAD COMPANY OF NEW JERSEY ET AL.**—Rates on boiler heads from Bayonne, N. J., to San Francisco, Cal. *Lindaburg, Depue & Faulks* for complainant. *Baker, Botts, Parker & Garwood, F. C. Dillard, J. P. Blair, Ed Baxter, S. F. Andrews, Charles Heebner, Edw. Barton, Jackson E. Reynolds, P. F. Dunne, C. W. Durbrow, and Wm. C. Coleman* for defendants. April 19, 1910. Dismissed; reparation for aight overcharge \$276.80.

2819. **RED WING UNION STONEWARE COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.**—Rates on stoneware from Aberdeen, S. Dak., to Bowman and Hettinger, N. Dak. *E. S. Hoyt* for complainant. *Wm. Ellis* for defendants. May 26, 1910. Dismissed; complaint to be satisfied by reparation.

2857. **THE MILBURN WAGON COMPANY v. LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY ET AL.**—Demurrage on carload of lumber at Toledo, Ohio, from Longville, La. *Edw. D. Ryan* and *E. R. Effar* for complainant. *O. E. Butterfield* and *Clyde Brown*, for defendants. March 14, 1910. Dismissed on motion of complainant.

2872. **DAYTON CHAMBER OF COMMERCE v. CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.**—Rates on coal from Lester and Glendale, W. Va., to Dayton, Ohio. *W. B. Moore* for complainant. *E. D. Hotchkiss*, *O. E. Butterfield*, and *Clyde Brown* for defendants. April 11, 1910. Dismissed without prejudice on motion of complainant.

2880. **MANCHESTER GRANITE & MARBLE COMPANY v. CHESAPEAKE & OHIO RAILWAY COMPANY.**—Rates on granite, marble, and stone from Manchester, Ohio, to South Fayette, W. Va. *R. L. Grimes* for complainant. *E. D. Hotchkiss* for defendant. April 11, 1910. Dismissed for want of prosecution.

2892. **WATERMAN LUMBER & SUPPLY COMPANY v. TEXAS & GULF RAILWAY COMPANY ET AL.**—Rates on lumber from Waterman, Tex., to Nantes, Colo. *J. S. Kirkpatrick* for complainant. *E. L. Sargent*, *N. H. Loomis*, *F. C. Dillard*, *M. L. Clardy*, *James C. Jeffery*, *R. F. Ford*, and *K. M. Wharry* for defendants. June 2, 1910. Dismissed on motion of complainant; reparation \$17.76 for misrouting.

2914. **UNITED STATES OF AMERICA v. PHILADELPHIA & READING RAILWAY COMPANY ET AL.**—Fares for transporting passengers from Philadelphia, Pa., to Portsmouth, N. H., and Newport, R. I., and return. *W. P. Potter*, Acting Secretary of the Navy, *Henry A. Wise*, by *G. H. Dorr*, for complainant. *E. G. Buckland* and *Charles Heebner* for defendants. March 8, 1910. Discontinued; complaint to be satisfied.

2943. **WINONA WAGON COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.**—Rates on farm wagons from Minneapolis, Minn., to Stockton, Cal. *F. E. Higgins* for complainant. *E. B. Peirce*, *Wm. Ellis*, *N. H. Loomis*, *F. C. Dillard*, *E. N. Clark*, *T. L. Philips*, *P. F. Dunne*, *C. W. Durbrow*, *Wm. F. Herrin*, and *F. G. Wright* for defendants. March 12, 1910. Dismissed on motion of complainant.

2974. **C. W. KETTERING MERCANTILE COMPANY v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL.**—Rates on refrigerators from Waterloo, Iowa, to Rocky Ford, Colo. *G. M. Stephen* for complainant. *E. B. Peirce*, *M. L. Bell*, *A. B. Enoch*, and *D. L. Meyers*  
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for defendants. April 4, 1910. Transferred to Special Docket No. 9699, for adjustment.

2979. **INGERSOLL-RAND COMPANY v. COLORADO & SOUTHERN RAILWAY COMPANY ET AL.**—Rates on mining machinery from Denver, Colo., to San Francisco, and Los Angeles, Cal. *John D. Rhodes* for complainant. *E. N. Clark, J. G. McMurry, W. R. Kelly, E. E. Whitted, Robert H. Widdicombe, F. C. Dillard, C. W. Durbrow, P. F. Dunne, Wm. F. Herrin, and Henry T. Rogers* for defendants. June 1, 1910. Dismissed; straight overcharge, \$53.60, paid.

3039. **THOMAS O. SELFRIDGE v. PHILADELPHIA, BALTIMORE & WASHINGTON RAILROAD COMPANY ET AL.**—Rates on cinders from Washington, D. C., to Garrett Park, Md. *Thomas O. Selfridge* for complainant in person. *George Stuart Patterson* for P. B. & W. R. R. Co. March 18, 1910. Transferred to Special Docket No. 10190, for adjustment.

3040. **TRANSPORTATION COMMITTEE, MANUFACTURERS CLUB, OF BUFFALO, N. Y., v. THE PULLMAN COMPANY.**—Fares for berths in sleeping cars between Buffalo, N. Y., and Chicago, Ill. *Victor R. Blehdon* and *M. Kimball* for complainant. *G. S. Fernald* for defendant. May 2, 1910. Dismissed on motion of complainant.

3042. **THE SOUTH OMAHA LIVE STOCK EXCHANGE v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL.**—Rates on live stock from Kansas City, St. Joseph, South St. Joseph, Leavenworth, and Atchison, to Chicago, Ill. *S. F. Stryker* and *Baxter & Van Dusen* for complainant. *Blewett Lee, Hale Holden, Winston, Payne, Strawn & Shaw, M. L. Bell, James E. Kelby, Wm. Ellis, S. F. Andrews, and S. A. Lynde* for defendants. May 3, 1910. Dismissed on motion of complainant; complaint to be satisfied.

3051. **THOMAS W. COLLINS & COMPANY v. DELAWARE, JACKAWANNA & WESTERN RAILROAD COMPANY ET AL.**—Rates on beer from New York and Hoboken, N. J., to San Francisco, Cal. *J. O. Bracken* for complainant. *N. H. Loomis, F. C. Dillard, S. A. Lynde, Wm. Ellis, P. F. Dunne, C. W. Durbrow, Wm. F. Herrin, Robert Dunlap, T. J. Norton, Edgar H. Boles, John H. Clarke, M. L. Clardy, James C. Jeffery, and John L. Seager* for defendants. April 11, 1910. Dismissed on motion of complainant; following No. 2513.

3070. **CLARENCE K. HARTLEY v. EL PASO & NORTHEASTERN RAILWAY COMPANY.**—Discrimination in furnishing facilities for transportation of ore at Jarilla, N. Mex. *Frank P. Blair* for complainant. *Hawkins & Franklin* for defendant. April 18, 1910. Dismissed on motion of complainant.

3074. **FLORENCE WAGON WORKS v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.**—Rates on iron articles and paint from Cleveland, Ohio, Pittsburg, Pa., Monongahela, Pa., Kent, Ohio, West

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Pittsburg, Pa., Detroit, Mich., Columbus, Mansfield, and Zanesville, Ohio, to Florence, Ala. *G. M. Stephen* for complainant. *H. A. Taylor, T. H. Burgess, W. G. Dearing, Perkins Baxter, C. O. Hunter, Charles B. Fernald, O. E. Butterfield, Clyde Brown, Wm. C. Coleman, Edw. Barton, and M. R. Waite* for defendants. March 16, 1910. Dismissed on motion of complainant.

3078. *PICKANDS-MAGEE COMPANY v. NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY*.—Demurrage on two carloads of foundry coke at New Haven, Conn., shipped from Leckrone, Pa. *M. C. Briggs* for complainant. *E. G. Buckland* for defendant. May 9, 1910. Dismissed for want of prosecution.

3081. *ALABAMA LUMBER & EXPORT COMPANY v. ATLANTIC COAST LINE RAILROAD COMPANY ET AL.*—Rates on lumber from Enterprise, Ala., to New York. *John J. Earle* for complainant. *George Stuart Patterson, Ed. Baxter, S. F. Andrews, and Sloss D. Baxter* for defendants. May 9, 1910. Dismissed on motion of complainant.

3110. *THEODORE HOFELLER & COMPANY v. ERIE RAILROAD COMPANY ET AL.*—Rates on scrap rubber from New York City to Naugatuck, Conn. *Julius Hofeller* for complainant. *H. A. Taylor, T. H. Burgess, and E. G. Buckland* for defendants. May 9, 1910. Dismissed on motion of complainant.

3182. *WILLIAM A. REDDICK v. MICHIGAN CENTRAL RAILROAD COMPANY ET AL.*—Rates on mole and animal traps from Niles, Mich., to St. Louis, Mo., Toledo, Ohio, Philadelphia, Pa., and New York. *William A. Reddick* for complainant in person. *W. S. Horton and George Stuart Patterson* for defendants. June 7, 1910. Dismissed on motion of complainant; complaint satisfied.

3231. *CEDAR RAPIDS MACHINE & SUPPLY COMPANY v. CHICAGO & NORTHWESTERN RAILWAY COMPANY ET AL.*—Rates on boilers from Kalainazoo, Mich., to Cedar Rapids, Iowa. *G. M. Stephen* for complainant. *S. A. Lynde, O. E. Butterfield, and Clyde Brown* for defendants. June 3, 1910. Dismissed on motion of complainant.

3237. *EASTERN & WESTERN LUMBER COMPANY v. OREGON RAILROAD & NAVIGATION COMPANY ET AL.*—Rates on fir lumber from Portland, Oreg., to Ely and McGill, Nev. *C. B. Duffy* for complainant. *L. G. Cannon* for Nevada Northern Ry. Co. May 28, 1910. Dismissed on motion of complainant.

3268. *EDWARD McDOWELL BAECHTEL v. NORFOLK & WESTERN RAILWAY COMPANY*.—Passenger fares from Hagerstown, Md., to Shepherdstown, W. Va., via Antietam, Md., and return. *Edw. McDowell Baechtel* for complainant in person. *Ed. Baxter and R. Walton Moore* for defendant. June 2, 1910. Dismissed on motion of complainant.

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REPARATION CASES DISPOSED OF BY THE COMMISSION IN  
FORMAL BUT UNREPORTED OPINIONS FROM FEBRUARY 14,  
1910, TO JULY 13, 1910.

[NOTE.—"U. R." in parentheses denotes unreported reparation cases.]

3037. (U. R. No. 114.) *Stover Manufacturing Company v. Chicago Milwaukee & St. Paul Railway Company et al.* February 14, 1910. Unreasonable rate on windmill towers from Freeport, Ill., to New York, N. Y. *W. A. Hance* for complainant; *William Ellis* and *H. A. Taylor* for defendants. Reparation awarded for \$24.80.

2220. (U. R. No. 115.) *Hartman Furniture & Carpet Company v. Chicago Great Western Railway Company et al.* March 7, 1910. Unreasonable rate on furniture from Bloomington, Ind., to Minneapolis, Minn. *Leonard Brisley* for complainant; *A. G. Briggs*, *G. W. Markham*, and *G. W. Kretzinger* for defendants. Reparation awarded for \$38.25.

2924. (U. R. No. 116.) *Sheboygan Mineral Water Company v. Northern Pacific Railway Company et al.* March 7, 1910. Unreasonable rate on empty mineral water bottles from Butte, Mont., to Sheboygan, Wis. *G. W. Witte* for complainant; *Charles W. Bunn*, *Charles A. Hart*, *Thomas Wilson*, and *S. A. Lynde* for defendants. Reparation awarded for \$28.40.

2930. (U. R. No. 117.) *McCaul-Webster Elevator Company v. Chicago, Milwaukee & St. Paul Railway Company et al.* March 7, 1910. Unreasonable rate on bulk corn from Sioux City, Iowa, to Pemberton, Minn. *J. L. McCaul* for complainant; *William Ellis*, *J. R. Dickinson*, and *Hale Holden* for defendants. Reparation awarded for \$29.19.

3019. (U. R. No. 118.) *Southern Cotton Oil Company v. Central of Georgia Railway Company.* March 14, 1910. Excessive rate on fertilizer from Fort Gaines, Ga., to Columbia, Ala. *H. W. B. Glover* for complainant; *Ed. Baxter* and *R. Walton Moore* for defendant. Reparation awarded for \$9.

3020. (U. R. No. 119.) *Southern Cotton Oil Company v. Atlantic Coast Line Railroad Company.* March 14, 1910. Unreasonable rate on cotton-seed meal from Sumter, S. C., to Tampa, Fla. *H. W. B. Glover* for complainant; *Ed. Baxter* and *R. Walton Moore* for defendant. Reparation awarded for \$82.

2190. (U. R. No. 120.) *Hammond Packing Company v. Atchison, Topeka & Santa Fe Railway Company et al.* March 14, 1910. Unreasonable rate on oleo stearin from St. Joseph, Mo., to Gretna, La., via Fort Worth, Tex. *F. D. McKenney* and *Ralph Crews* for complainant; *Robert Dunlap*, *T. J. Norton*, *E. L. Sargent*, and *J. S. Hershey* for defendants. Reparation awarded for \$448.90.

2769. (U. R. No. 121.) *Vaughn Manufacturing Company v. Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company et al.* March 14, 1910. Unreasonable rate on spokes in the white from Spencer, Ind., to Jefferson, Wis. *G. M. Stephen* for complainant; *S. A. Lynde* for Chicago & Northwestern Railway Company. Reparation awarded for \$46.50.

2969. (U. R. No. 122.) *J. A. Winkel & Company v. Spokane International Railway Company et al.* April 5, 1910. Unreasonable rate on lumber from Spokane, Wash., to Hettinger, N. Dak. *Leonard Brisley* for complainant; *Geo. H. Martin*, *E. W. Beatty*, *Alfred H. Bright*, and *William Ellis* for defendants. Reparation awarded for \$48.45.

2404. (U. R. No. 123.) *Pioneer Pole & Shaft Company v. Cincinnati, Hamilton & Dayton Railway Company et al.* April 5, 1910. Unreasonable rate on vehicle poles and shafts, ironed in the white, from Troy, Ohio, to Janesville, Wis. *F. L. Marshall* for complainant. No appearances for defendants. Reparation awarded for \$22.80.

2702. (U. R. No. 124.) *National Pole Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company et al.* April 5, 1910. Unreasonable rates on poles from Itasca Dock, Wis., to Bonney, Chenango, Bowie, and Waxahachie, Tex. *G. M. Stephen* for complainant; *H. M. Pearce* and *S. A. Lynde* for defendants. Reparation awarded for \$101.77.

2939. (U. R. No. 125.) *Pabst Brewing Company v. Missouri Pacific Railway Company et al.* April 11, 1910. Alleged unreasonable rate on empty beer packages from Atchison, Kans., to Milwaukee, Wis. *Charles Zielke* for complainant; *B. M. Flippin* and *William Ellis* for defendants. Dismissed.

2958. (U. R. No. 126.) *Robertson Brothers v. Missouri Pacific Railway Company.* April 11, 1910. Unreasonable rates on corn and wheat from Cook, Nebr., to St. Louis, Mo. *A. A. Robertson* for complainant; *James C. Jeffery* for defendant. Allowance for reparation deferred pending presentation of proof.

2846. (U. R. No. 127.) *Ryan & Newton Company v. Southern Pacific Company et al.* April 11, 1910. Unreasonable rates on grapes from Lodi and Armbrust, Cal., to Spokane, Wash. *Wakefield & Witherspoon* for complainant; *James G. Wilson* and *F. C. Dillard* for Southern Pacific Company. Reparation awarded for \$204.75.

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2987. (U. R. No. 128.) *Sunderland Brothers Company v. Missouri Kansas & Texas Railway Company et al.* April 11, 1910. Unreasonable rate on common building brick from Mound Valley, Kans., to Bellevue, Nebr. *C. E. Childe* for complainant; *James Hagerman, Joseph M. Bryson, Chester M. Dawes, and J. E. Kelby* for defendants. Reparation awarded for \$20.90.

3024. (U. R. No. 129.) *National Sewing Machine Company v. Chicago, Cincinnati & Louisville Railroad Company et al.* April 11, 1910. Unreasonable rate on sewing machine woodwork from Peru, Ind., to Belvidere, Ill. *G. M. Stephen* for complainant; *A. C. Huey and S. A. Lynde* for defendants. Reparation awarded for \$57.37.

3036. (U. R. No. 130.) *Swift & Company v. Atchison, Topeka & Santa Fe Railway Company et al.* April 11, 1910. Unreasonable rate on packing-house products from Kansas City, Mo., to Colorado, Tex. *A. H. & Henry Veeder and Maurice Weigle* for complainant. *D. L. Meyers* for defendants. Reparation awarded for \$93.23.

2835. (U. R. No. 131.) *Northwestern Traffic & Credit Bureau v. Chicago, Milwaukee & St. Paul Railway Company et al.* April 16, 1910. Unreasonable rates on general merchandise from Minneapolis, Minn., to Mahto, S. Dak. *G. M. Springer* for complainant. *William Ellis* for defendants. Reparation awarded for \$4.15.

2665. (U. R. No. 132.) *Fred. Wolter v. St. Louis & San Francisco Railroad Company et al.* May 2, 1910. Misrouting lumber shipped from New Albany, Miss., and destined to St. Charles, Minn. *Eugene Miller* for complainant. *James B. Sheean, M. L. Bell, A. B. Enoch, Edward A. Haid, and F. H. Wood* for defendants. Reparation awarded for \$59.10.

2671. (U. R. No. 133.) *J. I. Lamb Company v. Chicago & North Western Railway Company et al.* May 2, 1910. Unreasonable rate on apples from Atchison, Kans., to La Crosse, Wis. *J. I. Lamb and John C. Burns* for complainant. *E. J. Seymour, William Ellis, and F. G. Wright* for defendants. Reparation awarded for \$16.32.

3119. (U. R. No. 133.) *John C. Burns v. Chicago, Milwaukee & St. Paul Railway Company et al.* May 2, 1910. Unreasonable rates on apples from Leavenworth, Kans., and Savannah, Mo., to La Crosse, Wis. *J. I. Lamb and John C. Burns* for complainant. *E. J. Seymour, William Ellis, and F. G. Wright* for defendants. Reparation awarded for \$45.60.

2996. (U. R. No. 134.) *J. S. Barlow v. Missouri Pacific Railway Company et al.* May 2, 1910. Unreasonable rate on gas engines and parts from Fairmount, Ind., to Bartlesville, Okla. *Ed. Wilson* for complainant. *W. T. Treleven* for Atchison, Topeka & Santa Fe Railway Company. Reparation awarded for \$41.85.

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2444. (U. R. No. 135.) *W. N. Rosenthal v. Atchison, Topeka & Santa Fe Railway Company*. May 2, 1910. Unreasonable rate on furniture from Chicago, Ill., to Las Vegas, N. Mex. *G. M. Stephen* for complainant. *J. L. Coleman* and *D. L. Meyers* for defendant. Reparation awarded for \$4.35.

2498. (U. R. No. 136.) *H. J. Heinz Company v. New York, Chicago & St. Louis Railroad Company et al.* May 2, 1910. Unreasonable rate on salt from Cleveland, Ohio, to Westfield, Wis. *C. O. Johnson* for complainant. *F. E. Learned, John H. Clarke, and Alfred H. Bright* for defendants. Reparation awarded for \$30.61.

2575. (U. R. No. 137.) *Joseph M. Schulz Chemical Company v. Minneapolis & St. Louis Railroad Company et al.* May 2, 1910. Unreasonable rate on gum olibanum from New York, N. Y., to Minneapolis, Minn. *Leonard Brisley* for complainant. *George W. Severs* for Minneapolis & St. Louis Railroad Company. Reparation awarded for \$14.59.

2751. (U. R. No. 138.) *T. M. Partridge Lumber Company v. Minneapolis, St. Paul & Sault Ste. Marie Railway Company et al.* May 2, 1910. Unreasonable rate on lumber from Tony, Wis., to Zumbrota, Minn. *H. F. Partridge* for complainant. *William Ellis, F. G. Wright, and George A. Kingsley* for defendants. Reparation awarded for \$1.62.

3030. (U. R. No. 139.) *Grinnell, Collins & Company v. Chicago, Burlington & Quincy Railroad Company et al.* May 2, 1910. Alleged unreasonable rate on apples from Iatan, Mo., to Minneapolis, Minn. *Leonard Brisley* for complainant. *William Ellis, F. G. Wright, and Andrew Lees* for defendants. Dismissed.

3079. (U. R. No. 140.) *Quartz Glass & Manufacturing Company v. Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company et al.* May 2, 1910. Unreasonable rate on tank blocks from Steubenville, Ohio, to Los Angeles, Cal. *F. P. Gregson* for complainant. *C. W. Durbrow* for defendants. Reparation awarded for \$163.75.

3138. (U. R. No. 141.) *Riverside Fibre & Paper Company v. Chicago, Milwaukee & St. Paul Railway Company et al.* May 2, 1910. Unreasonable rate on writing paper from Appleton, Wis., to Minnesota Transfer, Minn. *W. D. Hurlbut* for complainant. *William Ellis* for Chicago, Milwaukee & St. Paul Railway Company. Reparation awarded for \$24.65.

2693. (U. R. No. 142.) *Weis Manufacturing Company v. Lake Shore & Michigan Southern Railway Company et al.* May 3, 1910. Alleged unreasonable rate on fiber-board box letter files from Monroe, Mich., to San Francisco, Cal. No appearance for complainant. *N. H. Loomis, C. W. Durbrow, F. O. Dillard, and L. T. Wilcox* for defendants. Dismissed for want of prosecution.

2912. (U. R. No. 143.) *Checotah Cotton Oil Company v. Missouri, Kansas & Texas Railway Company et al.* May 3, 1910. Unreasonable rate on compressed cotton linters from Checotah, Okla., to Los Angeles, Cal. *William F. Shewey* for complainant. *L. B. Chipley, F. C. Dillard, S. G. Reed, C. W. Durbrow, and L. T. Wilcox* for defendants. Reparation awarded for \$120.63.

2778. (U. R. No. 144.) *American Plow Company v. Pere Marquette Railroad Company et al.* May 2, 1910. Unreasonable rate on agricultural implement wheels from Laporte, Ind., to Madison, Wis. *G. M. Stephen* for complainant. *William Ellis and F. G. Wright* for defendants. Reparation awarded for \$10.68.

2906. (U. R. No. 145.) *Arrow Lumber & Shingle Company v. Minneapolis, St. Paul & Sault Ste. Marie Railway Company et al.* May 2, 1910. Alleged unreasonable rate on shingles from Vancouver, B. C., to Monticello, N. Y. *W. T. McClarren* for complainant. *A. H. Bright, H. S. Noble, J. B. Kerr, O. E. Butterfield, and E. W. Beatty* for defendants. Dismissed because of no appearance by either party at the hearing.

3132. (U. R. No. 146.) *Jackel Brothers v. Delaware, Lackawanna & Western Railroad Company et al.* May 3, 1910. Unreasonable rate on ice from Reeders, Pa., to Newark, N. J. *Everett Colby* for complainant. *J. L. Scager and H. A. Taylor* for defendants. Reparation awarded for \$462.04.

2925. (U. R. No. 147.) *Port Huron Engine & Thresher Company v. Chicago, Rock Island & Pacific Railway Company et al.* May 2, 1910. Unreasonable rate on road roller from Des Moines, Iowa, to Port Huron, Mich. *G. M. Stephen* for complainant. *Wallace T. Hughes and H. C. Martin* for defendants. Reparation awarded for \$6.60.

2984. (U. R. No. 148.) *Sunderland Brothers Company v. Chicago & North Western Railway Company et al.* May 2, 1910. Unreasonable rate on cement from certain points in Kansas to certain points in South Dakota and Nebraska. *C. E. Childe* for complainant. *C. C. Wright, James C. Jeffery, Herbert J. Campbell, Edson Rich, and J. E. Kelby* for defendants. Reparation awarded for \$61.10.

2771. (U. R. No. 149.) *Farmers Handy Wagon Company v. Pere Marquette Railroad Company et al.* May 2, 1910. Unreasonable rate on silos from Saginaw, Mich., to Oshkosh, Wis. *G. M. Stephen* for complainant. *S. A. Lynde* for Chicago & Northwestern Railway Company. Reparation awarded for \$34.29.

2949. (U. R. No. 150.) *Fullerton Lumber Company v. Chicago, Milwaukee & St. Paul Railway Company et al.* May 2, 1910. Unreasonable rates on lumber from various points in Minnesota and Wisconsin to Stamford and Kadoka, S. Dak. *E. B. Curtis* for com-

plainant. *William Ellis* and *F. G. Wright* for Chicago, Milwaukee & St. Paul Railway Company. Reparation awarded for \$528.36.

1895. (U. R. No. 151.) *General Chemical Company v. Maine Steamship Company et al.* May 2, 1910. Unreasonable rate on alum from New York, N. Y., to Basin Mills, Me. *Steele, Otis & Hall* for complainant. *George C. Hills* for defendant. Reparation awarded for \$16.40.

2481. (U. R. No. 152.) *Learned-Haynes Company v. St. Louis & San Francisco Railroad Company et al.* May 2, 1910. Alleged unreasonable rate on hard-wood lumber from Bennington, Okla., to Paris, Tex. No appearances for complainant. *F. H. Wood, R. A. Kleinschmidt, Willmott & Wilhart*, and *W. C. Preston* for defendants. Dismissed for want of prosecution.

2752. (U. R. No. 153.) *American Lumber & Manufacturing Company v. Central of Georgia Railway Company et al.* May 2, 1910. Unreasonable rate on lumber from Glenwood, Ala., to Avis, Pa. *M. Riely* for complainant. *Ed. Baxter, Claudian B. Northrop*, and *O. E. Butterfield* for defendants. Reparation awarded for \$46.30.

2800. (U. R. No. 154.) *Utah-Idaho Sugar Company v. Oregon Short Line Railroad Company et al.* May 2, 1910. Unreasonable rate on sugar from Blackfoot, Idaho, and Garland, Utah, to Sioux City, Iowa. *O. Morris* for complainant. *F. C. Dillard, N. H. Loomis, P. L. Williams*, and *William Ellis* for defendants. Reparation awarded for \$3,989.70.

2940. (U. R. No. 155.) *R. Lowenthal & Company v. Chicago, Milwaukee & St. Paul Railway Company.* May 2, 1910. Unreasonable rate on rags from Chicago, Ill., to Menasha and Appleton, Wis. *Edward B. Friedlander* for complainant. *William Ellis* for defendant. Reparation awarded for \$33.60.

2560. (U. R. No. 156.) *Scully Steel & Iron Company v. Chicago, Milwaukee & St. Paul Railway Company et al.* May 2, 1910. Unreasonable rate on plates of steel from Steubenville, Ohio, to Rockford, Ill. *Frank T. Winslow* for complainant. *William Ellis* and *F. G. Wright* for Chicago, Milwaukee & St. Paul Railway Company. Reparation awarded for \$19.86.

2657. (U. R. No. 157.) *Great Western Sugar Company v. Union Pacific Railroad Company et al.* May 2, 1910. Unreasonable rate on sugar from certain points in Colorado to La Crosse, Wis. *E. R. Griffin* and *Caldwell Martin* for complainant. *N. H. Loomis, F. C. Dillard*, and *C. C. Dorsey* for Union Pacific Railroad Company. Reparation awarded for \$445.71.

2723. (U. R. No. 158.) *Henry Holverscheid & Company v. Louisville & Nashville Railroad Company et al.* May 2, 1910. Unreasonable rate on coal from Four Mile, Ky., to South Whitley, Ind. *Henry*

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*Holverscheid* for complainant. No appearances for defendants. Reparation awarded for \$49.90.

2993. (U. R. No. 159.) *Kaye & Carter Lumber Company v. Minneapolis, St. Paul & Sault Ste. Marie Railway Company et al.* May 2, 1910. Unreasonable rate on cedar posts from Westboro, Wis., to Buffalo Center, Iowa. *Charles A. Kaye* for complainant. *George A. Kingsley, M. L. Bell, and A. B. Enoch* for defendants. Reparation awarded for \$5.

2073. (U. R. No. 160.) *Minneapolis Iron Store Company v. Chicago, Milwaukee & St. Paul Railway Company et al.* May 2, 1910. Unreasonable rate on buggy bodies from Cincinnati, Ohio, to Minneapolis, Minn. *Samuel L. Sewell* for complainant. *William Ellis and F. G. Wright* for Chicago, Milwaukee & St. Paul Railway Company. Reparation awarded for \$9.91.

2578. (U. R. No. 161.) *E. L. Richmond Company v. Grand Trunk Railway Company of Canada et al.* May 2, 1910. Alleged unreasonable rate on baled straw from Orchard Lake, Mich., to Goshen, N. Y. *E. L. Richmond* for complainant. *G. W. Kretzinger, H. A. Taylor, and H. Murray Andrews* for defendants. Dismissed.

2891. (U. R. No. 162.) *American Smelting & Refining Company v. Oregon Short Line Railroad Company et al.* May 9, 1910. Unreasonable rates on lead bullion from Murray, Utah, to certain points in Pennsylvania and Indiana. *F. R. Foraker* for complainant. *Gordon M. Buck and George Stuart Patterson* for defendants. Reparation awarded for \$161.41.

3043. (U. R. No. 163.) *Nitrate Agencies Company v. Illinois Central Railroad Company et al.* May 9, 1910. Unreasonable rate on nitrate of soda from New Orleans, La., to Steens, Miss. *H. P. Schuck* for complainant. *Hunter C. Leake, Ed. Baxter, Sidney F. Andrews, and Claudian B. Northrop* for defendants. Reparation awarded for \$146.62.

2961. (U. R. No. 164.) *Nourse-Taylor Lumber Company v. Gulf & Ship Island Railroad Company.* May 9, 1910. Alleged misrouting of lumber from Collins, Miss., to Silvis Shops, Ill. *John A. Nourse and Edward Leville* for complainant. *B. E. Eaton and J. E. Hawley* for defendant. Dismissed.

2998. (U. R. No. 165.) *Sunderland Brothers Company v. Chicago, Burlington & Quincy Railroad Company.* May 2, 1910. Unreasonable rate on cement from Hannibal, Mo., to Bridgeport, Nebr. *C. E. Childe* for complainant. *Hale Holden* for defendant. Reparation awarded for \$42.75.

2947. (U. R. No. 166.) *Dan Joseph Company v. Central of Georgia Railway Company et al.* May 2, 1910. Unreasonable rate on oats from Elk City, Okla., to Columbus, Ga. *B. Andrews* for complainant.

*R. Walton Moore, W. A. Northcutt, and V. M. Chuis* for defendants. Reparation awarded for \$38.

2677. (U. R. No. 167.) *American Tobacco Company v. Chicago, Milwaukee & St. Paul Railway Company et al.* June 2, 1910. Unreasonable rates on leaf tobacco from certain points in Wisconsin to Middletown, Ohio, and to Louisville, Ky. *W. R. Perkins* for complainant. *William Ellis, O. E. Butterfield, Charles B. Fernald, and E. C. Field* for defendants. Reparation awarded for \$263.52.

1511. (U. R. No. 168.) *Naylor & Company v. Lehigh Valley Railroad Company et al.* June 2, 1910. Unreasonable rate on pyrites cinder from Buffalo, N. Y., to various points in Pennsylvania and New Jersey. *Thompson & Van Sant* for complainant. *Edgar H. Boles, James S. Havens, and Samuel M. Havens* for defendants. Reparation awarded for \$6,969.38.

3137. (U. R. No. 169.) *Minnesota & Iowa Elevator Company v. Chicago, Rock Island & Pacific Railway Company et al.* June 2, 1910. Unreasonable rate on bulk corn from Sioux City, Iowa, to Lismore, Minn. *A. H. Wood* for complainant. *M. L. Bell and J. D. Armstrong* for defendants. Reparation awarded for \$62.35.

3170. (U. R. No. 170.) *H. J. Heinz Company v. Chicago, Milwaukee & St. Paul Railway Company et al.* June 2, 1910. Unreasonable rate on kraut and kraut brine from Muscatine, Iowa, to Cincinnati, Ohio. *C. O. Johnson* for complainant. *William Ellis, William Hodgdon, M. S. Connolly, and T. E. Learned* for defendants. Reparation awarded for \$22.08.

2848. (U. R. No. 171.) *Lemmon Hardware Company v. Chicago, Milwaukee & St. Paul Railway Company et al.* June 2, 1910. Unreasonable rates on certain class freight, agricultural implements and wagons, from various points in Minnesota, Illinois, and Wisconsin to Lemmon, S. Dak. *Leonard Brisley* for complainant. *F. G. Wright* for defendants. Reparation awarded for \$133.34.

2074. (U. R. No. 172.) *Minneapolis Iron Store Company v. Chicago, Milwaukee & St. Paul Railway Company et al.* June 2, 1910. Unreasonable rate on cutters from Jackson, Mich., to Minnesota Transfer, Minn. *S. L. Sewall* for complainant. *William Ellis, T. D. Learned, and O. E. Butterfield* for defendants. Reparation awarded for \$17.60.

2715. (U. R. No. 173.) *Bamblé Brothers v. Chicago, Milwaukee & St. Paul Railway Company et al.* June 2, 1910. Unreasonable rate on plate glass from St. Paul, Minn., to Lemmon, S. Dak., and on general merchandise from St. Paul, Minnesota Transfer, and Minneapolis, Minn., to Lemmon, S. Dak. *Leonard Brisley* for complainant. *William Ellis* for defendants. Reparation awarded for \$111.12.

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2805. (U. R. No. 174.) *Lemmon Lumber Company v. Chicago, Milwaukee & St. Paul Railway Company et al.* June 2, 1910. Unreasonable rate on soft coal from Chicago, Ill., to Lemmon, S. Dak. *Leonard Brisley* for complainant. *F. G. Wright* for defendants. Reparation awarded for \$125.41.

2754 and 2764 (and six other cases). (U. R. No. 175.) *E. D. Payne et al. v. Chicago, Milwaukee & St. Paul Railway Company et al.* June 2, 1910. Unreasonable rates on groceries, general merchandise, etc., from Chicago, Ill., St. Paul, Minneapolis, and Minnesota Transfer, Minn., to points in North Dakota and South Dakota. *Leonard Brisley* and *H. E. White* for complainants. *William Ellis* for defendants. Reparation awarded for \$809.89.

2756. (U. R. No. 176.) *Copper Queen Consolidated Mining Company v. Pennsylvania Railroad Company et al.* June 2, 1910. Unreasonable rate on coke from Bradenville, Pa., to El Paso, Tex. *George Latman* for complainant. *George Stuart Patterson; George D. Dixon; Edward Colston; Ed. Baxter; R. Walton Moore; Harry H. Hall; Baker, Botts, Parker & Garwood; J. P. Blair; F. C. Dillard; and Hawkins & Franklin* for defendants. Reparation awarded for \$39.75.

2991. (U. R. No. 177.) *Ed. Caddell & Sons v. Colorado & Southern Railway Company et al.* June 2, 1910. Misrouting soft coal shipped from Walsenburg, Colo., to various points in Oklahoma. *John Caddell* for complainant. *E. E. Whitted, J. M. Carter, M. L. Bell, and A. B. Enoch* for defendants. Reparation awarded for \$119.07.

3145. (U. R. No. 178.) *Dakota Cereal Company v. Chicago, Milwaukee & St. Paul Railway Company.* June 3, 1910. Unreasonable rate on barley from Ortle, S. Dak., to Chicago, Ill. *W. F. Ebert* for complainant. *William Ellis* for defendant. Reparation awarded for \$3.20.

3187. (U. R. No. 179.) *International Harvester Company of America v. Chicago, Milwaukee & St. Paul Railway Company.* June 3, 1910. Unreasonable rate on agricultural implements from Chicago, Ill., to Liberty, Mo. *Samuel D. Snow* for complainant. *William Ellis* for defendant. Reparation awarded for \$4.14.

3198. (U. R. No. 180.) *Carr Manufacturing Company v. Chicago, Milwaukee & St. Paul Railway Company.* June 3, 1910. Unreasonable rate on wagon boxes from Washington, Iowa, to Kansas City, Mo. *H. Carr, jr.*, for complainant. *William Ellis* for defendant. Reparation awarded for \$4.14.

3058. (U. R. No. 181.) *C. S. Bentley et al. v. Chicago & North Western Railway Company.* June 2, 1910. Unreasonable rates on barley from Mapleton, Audubon, and Holstein, Iowa, to Chicago, Ill. *W. L. Hopkins* for complainants. *S. A. Lynde* for defendant. Reparation awarded for \$83.61.

3060. (U. R. No. 182.) *S. Morris & Company v. Lake Shore & Michigan Southern Railway Company et al.* June 3, 1910. Unreasonable rate on scrap iron from Chicago, Ill., to Indiana Harbor, Ind. *Benjamin B. Morris* for complainant. No appearances for defendants. Reparation awarded for \$795.02.

2731. (U. R. No. 183.) *Vote-Berger Company v. Fort Wayne, Cincinnati & Louisville Railroad Company et al.* June 3, 1910. Unreasonable rate on iron telephone wire from Muncie, Ind., to La Crosse, Wis. *G. M. Stephen* for complainant. *G. W. Kretzinger*, *S. A. Lynch*, and *O. E. Butterfield* for defendants. Reparation awarded for \$25.22.

3167. (U. R. No. 184.) *Val Blatz Brewing Company v. Chicago, Milwaukee & St. Paul Railway Company.* June 3, 1910. Unreasonable rate on beer from Milwaukee, Wis., to Powersville, Mo. *J. Kremer* for complainant. *William Ellis* for defendant. Reparation awarded for \$15.31.

2394. (U. R. No. 185.) *Wisconsin Bridge & Iron Company v. Chicago, Milwaukee & St. Paul Railway Company et al.* June 3, 1910. Unreasonable rate on bridge material from Milwaukee, Wis., to Sour Lake, Tex. *Emil L. Fuhrmann* for complainant. *William Ellis*; *Baker*, *Botts*, *Parker & Garwood*; and *E. B. Peirce* for defendants. Reparation awarded for \$1,023.68.

3164. (U. R. No. 186.) *Moline Plow Company v. Chicago, Milwaukee & St. Paul Railway Company.* June 3, 1910. Unreasonable rate on agricultural implements from Stoughton, Wis., to Sheldon, Iowa. *C. A. Banister* for complainant. *William Ellis* for defendant. Reparation awarded for \$7.50.

3014. (U. R. No. 187.) *R. L. Alexander & Company v. Atchison, Topeka & Santa Fe Railway Company et al.* June 3, 1910. Unreasonable rate on oak fence posts from Wanette, Okla., to Higgins, Tex. No appearance for complainant. *H. R. Teasdale* for defendants. Reparation awarded for \$114.01.

3112. (U. R. No. 188.) *Marquette Cement Manufacturing Company v. Chicago, Milwaukee & St. Paul Railway Company et al.* June 3, 1910. Excessive minimum weight on cement from Oglesby, Ill., to Ladysmith, Wis. *Gold Williams* for complainant. *F. G. Wright* and *William Ellis* for Chicago, Milwaukee & St. Paul Railway Company. Reparation awarded for \$24.60.

2833. (U. R. No. 189.) *Lawrence-Hensley Fruit Company v. Union Pacific Railroad Company et al.* June 3, 1910. Relatively unreasonable rate on apples from Bellingham, Wash., to Denver, Colo. *Joseph S. Jaffa* for complainant. *N. H. Loomis*, *F. C. Dillard*, *C. C. Dorsey*, *W. W. Cotton*, and *P. L. Williams* for defendants. Reparation awarded for \$84.

2941. (U. R. No. 190.) *Buck Brothers v. Baltimore & Ohio Railroad Company*. June 3, 1910. Unreasonable rate on coal re-consigned from Locust Point, Md., to Laurel, Md. *Burton G. Buck* for complainant. *W. C. Coleman* and *William A. Parker* for defendant. Reparation awarded for \$2.79.

3001. (U. R. No. 191.) *E. D. Payne v. Chicago, Milwaukee & St. Paul Railway Company et al.* June 7, 1910. Unreasonable rate on elevator, knocked down, from St. Paul, Minn., to Lemmon, S. Dak. *Leonard Brisley* for complainant. *William Ellis* for defendants. Reparation awarded for \$12.12.

3186. (U. R. No. 192.) *Hugh Murphy v. Chicago, Milwaukee & St. Paul Railway Company*. June 3, 1910. Unreasonable rate on ground limestone from Chicago, Ill., to Omaha, Nebr. *Hugh Murphy* for complainant. *William Ellis* for defendant. Reparation awarded for \$155.99.

3188. (U. R. No. 193.) *Northern Wood Company v. Chicago, Milwaukee & St. Paul Railway Company*. June 2, 1910. Unreasonable rate on wood from Oconto, Wis., to Chicago, Evanston, and Elsmere, Ill. *F. L. McLaughlin* for complainant. *William Ellis* for defendant. Reparation awarded for \$25.98.

2860. (U. R. No. 194.) *Lemmon Lumber Company v. Chicago, Milwaukee & St. Paul Railway Company et al.* June 6, 1910. Unreasonable rate on building paper from Sioux City, Iowa, to Lemmon, S. Dak. *Leonard Brisley* for complainant. *William Ellis* for defendants. Reparation awarded for \$12.74.

2534. (U. R. No. 195.) *Pabst Brewing Company v. Chicago, Burlington & Quincy Railroad Company et al.* June 6, 1910. Unreasonable rate on beer from Milwaukee, Wis., to McCook, Nebr., and to Tolleston, Ind. *Charles Zielke* for complainant. *Chester M. Daves*, *George S. Crosby*, *William Ellis*, and *O. E. Butterfield* for defendants. Reparation awarded for \$78.44.

2850. (U. R. No. 196.) *J. A. Winkel & Company v. Chicago, Milwaukee & St. Paul Railway Company et al.* June 6, 1910. Unreasonable rate on sash and doors from Minneapolis, Minn., to Hettinger, N. Dak. *Leonard Brisley* for complainant. *William Ellis* for defendants. Reparation awarded for \$28.

3116. (U. R. No. 197.) *Sheboygan Mineral Water Company v. Michigan Central Railroad Company et al.* June 10, 1910. Unreasonable rate on empty mineral water bottles from Buffalo, N. Y., to Sheboygan, Wis. No appearance for complainant. *S. A. Lynde* for Chicago & North Western Railway Company. Reparation awarded for \$30.75.

2795. (U. R. No. 198.) *John G. Wolfe v. Chicago, Milwaukee & St. Paul Railway Company et al.* June 2, 1910. Unreasonable rate on  
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emigrant movables from Big Stone City, S. Dak., to Hettinger, N. Dak. *Leonard Brisley* for complainant. *F. G. Wright* for defendants. Reparation awarded for \$19.26.

2794. (U. R. No. 199.) *Hettinger Hardware Company v. Chicago, Milwaukee & St. Paul Railway Company et al.* June 2, 1910. Unreasonable rate on hardware from Minneapolis, Minn., to Hettinger, N. Dak. *Leonard Brisley* for complainant. *F. G. Wright* for defendants. Reparation awarded for \$12.34.

2911. (U. R. No. 200.) *Polson Implement Company v. Union Pacific Railroad Company et al.* June 2, 1910. Alleged unreasonable rates on agricultural implements from points in eastern defined territory to Seattle, Portland, and other points in Washington and Oregon. *John F. Logan*, for complainant. *F. V. Brown, Frederick G. Dorety, George F. Reid*, and *W. W. Cotton* for defendants. Dismissed.

2886. (U. R. No. 201.) *S. T. Wiprud v. Chicago, Milwaukee & St. Paul Railway Company et al.* June 2, 1910. Unreasonable rates on class freight, salt, etc., from points in North Dakota, South Dakota, Minnesota, and Illinois to Hettinger, N. Dak., and Lemmon, S. Dak. *Leonard Brisley*, for complainant. *F. G. Wright*, for defendants. Reparation awarded for \$186.90.

3096. (U. R. No. 202.) *Deere & Webber Company v. Michigan Central Railroad Company et al.* June 10, 1910. Overcharge on cutters from Jackson, Mich., to Minneapolis, Minn. *Frank S. Pool* for complainant. *O. E. Butterfield, William Ellis, S. A. Lynde*, and *Richard L. Kennedy*, for defendants. Dismissed because barred by statute of limitations.

2168. (U. R. No. 203.) *Albert Preston v. Richmond, Fredericksburg & Potomac Railroad Company et al.* June 10, 1910. Unreasonable rate on cross-ties from Widewater and Lees Spur, Va., to Bryn Mawr, Pa. *Noel W. Barksdale*, for complainant. *R. Walton Moore* for Richmond, Fredericksburg & Potomac Railroad Company. Reparation awarded for \$40.

2951. (U. R. No. 204.) *Oldbury Electro-Chemical Company v. Cincinnati, Hamilton & Dayton Railway Company et al.* June 10, 1910. Unreasonable rate on phosphate rock from Siglo and Mount Pleasant, Tenn., to Niagara Falls, N. Y. *John J. Riker* for complainant. *John W. Loud, Ed. Baxter, O. E. Butterfield, John H. Clarke, H. A. Taylor, H. Murray Andrews, L. C. Stanley, Morison R. Waite, E. H. Boles*, and *C. O. Hunter* for defendants. Reparation awarded for \$996.94.

3146. (U. R. No. 205.) *Midland Linseed Company v. Chicago, Milwaukee & St. Paul Railway Company.* June 15, 1910. Unreasonable rate on linseed oil from Minneapolis, Minn., to La Crosse, Wis. *A. L. Bushur* for complainant. *William Ellis* for defendant. Reparation awarded for \$12.49.

1976. (U. R. No. 206.) *Robertson Paper Company v. Boston & Maine Railroad et al.* June 10, 1910. Unreasonable rate on manila wrapping paper, flat in bundles, from Bellows Falls, Vt., to Chattanooga, Tenn. *F. H. Babbitt* for complainant. *R. Walton Moore* for defendants. Reparation awarded for \$29.60.

3169. (U. R. No. 207.) *A. H. Stange Company v. Chicago, Milwaukee & St. Paul Railway Company.* June 10, 1910. Unreasonable rate on fuel wood from Merrill, Wis., to Chicago, Ill. *C. H. Stange* for complainant. *William Ellis* for defendant. Reparation awarded for \$85.59.

2727. (U. R. No. 208.) *Joseph A. Goddard Company v. Chicago & North Western Railway Company et al.* June 3, 1910. Unreasonable rate on cheese from Sheboygan, Wis., to Muncie, Ind. *G. M. Stephen* for complainant. *S. A. Lynde, F. P. Eyman, and C. B. Fernald* for defendants. Reparation awarded for \$59.11.

3033. (U. R. No. 209.) *Thomas Produce Company v. Chicago, Milwaukee & St. Paul Railway Company et al.* June 10, 1910. Unreasonable rate on potatoes from Green Bay and Cormier, Wis., to Painesdale, Mich. *B. M. Snyder* for complainant. *William Ellis* and *F. R. Bolles* for defendants. Reparation awarded for \$39.

3003. (U. R. No. 210.) *Ingersoll-Rand Company v. Central Railroad Company of New Jersey et al.* June 3, 1910. Unreasonable rate on mining machinery from Odenwelder, Pa., to Cardiff, Tenn. *John D. Rhodes* for complainant. *Jackson E. Reynolds, Charles Heebner, George R. Gaither, R. Walton Moore, Ed. Baxter, and W. D. Witherspoon* for defendants. Reparation awarded for \$26.33.

3034. (U. R. No. 211.) *Gamble-Robinson Commission Company v. St. Louis & San Francisco Railroad Company et al.* July 11, 1910. Unreasonable rate on apples from Seymour, Mo., to Minneapolis, Minn. *Wilson, Mercer, Holsinger, Swan & Ware, and F. H. Stinchfield* for complainant. *M. L. Bell, A. B. Enoch, Edward A. Haid, and F. H. Wood* for defendants. Reparation awarded for \$97.51.

2936. (U. R. No. 212.) *Emerson Manufacturing Company v. Chicago, Milwaukee & St. Paul Railway Company.* July 13, 1910. Unreasonable rate on agricultural implements from Rockford, Ill., to Cowgill, Mo. *C. S. Brantinglaw* for complainant. *William Ellis* for defendant. Reparation awarded for \$4.98.

NOTE.—The amount of reparation awarded in the above cases aggregates \$20,706.56.

18 I. C. C. Rep.



## REPARATION GRANTED UNDER SUPPLEMENTAL ORDERS OF THE COMMISSION DURING THE TIME COVERED BY THIS VOLUME.<sup>a</sup>

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1344. **NEW ALBANY FURNITURE COMPANY v. MOBILE, JACKSON & KANSAS CITY RAILROAD COMPANY ET AL.** April 28, 1910. Reparation of \$180.95, with interest, on shipments of furniture from New Albany, Miss., to various destinations on account of excessive rates.

1608. **VIRGINIA-CAROLINA CHEMICAL COMPANY v. ST. LOUIS SOUTHWESTERN RAILWAY COMPANY.** April 11, 1910. Reparation of \$130.50, with interest, on shipments of fertilizer from Shreveport, La., to various destinations on account of excessive rates.

1608. **VIRGINIA-CAROLINA CHEMICAL COMPANY v. ST. LOUIS SOUTHWESTERN RAILWAY COMPANY.** May 21, 1910. Reparation of \$191.85, with interest, to Jackson Fertilizer Company, on shipments of fertilizer from Shreveport, La., to various destinations on account of excessive rates.

1609. **DARLING & COMPANY ET AL. v. BALTIMORE & OHIO RAILROAD COMPANY ET AL.** May 2, 1910. Reparation of \$477.66 to Jarecki Chemical Company, \$471.21 to Wuichet Fertilizer Company, \$38.98 to E. Rauh & Sons Fertilizer Company, and \$9.53 to Swift & Company, with interest, by Louisville & Nashville Railroad Company, on shipments of phosphate rock from Centerville and Mt. Pleasant, Tenn., to various destinations on account of excessive rates.

• 2417. **WHITE BROTHERS v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.** May 27, 1910. Reparation of \$40.60, with interest, on shipment of hardwood lumber from Two Rivers, Wis., to San Francisco, Cal., on account of excessive rate.

2453. **CALIFORNIA FRUIT GROWERS EXCHANGE v. SANTA FE REFRIGERATOR DESPATCH COMPANY ET AL.** February 28, 1910. Reparation of \$2,414, with interest, on shipments of fruit from Los Angeles, Cal., to various destinations on account of excessive refrigeration charges.

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<sup>a</sup> The amount of reparation awarded in these cases aggregates \$3,955.28.



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 Fences, iron, Brighton, Ohio, to Tombstone, Ariz. 94.  
 Fencing, Richmond, Ind., to Billings, Okla., reconsigned to Wichita, Kans. 378.  
 Fertilizer, Memphis to Arkansas, 1, 3, 5.  
 Fertilizer, Prairie Switch, Ind., from Baltimore, Buffalo, Tennessee points, and Washington Court-House, Ohio, 522.  
 Fish, Pensacola, Fla., to Alabama points, 415.  
 Flaxseed screenings, Chicago to Milwaukee, 257.  
 Flour, Detroit to Atlantic seaboard, 582.  
 Flour, Minneapolis to New York, 113.  
 Flour, loading and unloading at Utica, N. Y. 271.  
 Folding chairs, Chicago to St. Joseph, Mo. 255.  
 Foodstuffs, Webster, S. Dak., to North Easton, Mass. 132.  
 Fresh fish, Pensacola, Fla., to Alabama points, 415.  
 Fruits, dunnage and loading charges, Tennessee points to Chicago, 540.  
 Garbanzo, Guaymas, Mex., to Philadelphia, 65.  
 Gasoline stoves, Lorain, Ohio, to Oconomowoc, Wis. 183.  
 Glass, Chicago to Chisholm, Minn., and Marquette, Mich. 165.  
 Glass, skylight, Dunbar, Washington, and Allegheny, Pa., to San Francisco, 202.  
 Grain, Enfield, Ill., to Henderson, Ky. 538.  
 Grain, elevation, Nebraska points, through Missouri River to eastern destinations, 364.  
 Grapes, Montrose, Iowa, to Rochester, Minn. 357.  
 Grapes, Paw Paw, Mich., to Green Bay, Wis. 249.  
 Grapes, South Haven, Mich., to La Crosse, Wis. 279.  
 Ground iron ore, Iron Ridge Junction, Wis., to Denver and Spokane, 596.  
 Hardware, Albuquerque, N. Mex., to El Paso, Tex. 57.  
 Hardwood lumber, Memphis, Tenn., to New Orleans, 83.  
 Hardwood lumber, San Francisco from east of Mississippi River, 308.

## COMMODITIES—Continued.

- Hardwood lumber, west of Mississippi River to San Francisco, 301.  
Hardwood lumber, West Virginia and Kentucky to Windsor, Ont. 162.  
Harness leather, California points to Denver, Colo. 220.  
Headings, St. Louis to Denver, 337.  
Heaters, hot-water, Detroit, Mich., to Oconomowoc, Wis. 183.  
Hoop steel, West Pittsburg, Pa., to Cleveland, reconsigned to Menominee, Mich. 193.  
Hoops, Pioneer, Ohio, to Covesville, Va. 494.  
Hoops, St. Louis to Denver, 337.  
Hoops, Tallulah, La., to Lime City, Tex. 224.  
Horse blankets, Official Classification territory, 205.  
Hot-water heaters and parts, Detroit, Mich., to Oconomowoc, Wis. 183.  
Hub blocks, Will's Point, Tex., to Stockton, Cal. 232.  
Iron, corrugated, El Paso, Tex., to Albuquerque, N. Mex. 57.  
Iron, Stockton, Cal., to Alturas, Cal. 109.  
Iron, Terre Haute, Ind., to Louisville, Cincinnati, and Dayton, 601.  
Iron, Vincennes, Ind., to Louisville, Ky. 604.  
Iron fences, Brighton, Ohio, to Tombstone, Ariz. 94.  
Iron hoops, St. Louis to Denver, 337.  
Iron ore, Iron Ridge Junction, Wis., to Denver and Spokane, 596.  
Iron roofing, Mississippi River to Nowata, Okla. 125.  
Jackets, Michigan City, Ind., to Beloit, Wis. 261.  
Leather, California points to Denver, 220.  
Leather boots and shoes, unloading and loading at Utica, N. Y. 271.  
Lima beans, California points to Omaha, 53.  
Lime, Ash Grove, Mo., to Laramie and Pine Bluffs, Wyo. 545.  
Lime, Frederick Road, Md., to Englishtown, N. J. 127.  
Link belting, East Moline, Ill., to New Orleans, 500.  
Linters, Montgomery, Ala., to Minneapolis, 180.  
Livestock, South Omaha to Cushman, Mont. 498.  
Logs, Granite Bluff, Iron Mountain, and Groveland Mine, Mich., to Kiel, Wis. 242.  
Lumber, Blissville, Ark., to Chicago, 517.  
Lumber, Ely, Minn., to St. Charles, Mo. 485.  
Lumber, Little Rock and Woodson, Ark., to Kansas, Missouri, and Oklahoma, 396.  
Lumber, Little Rock and Woodson, Ark., to Memphis, Tenn. 391.  
Lumber, Memphis, Tenn., to New Orleans, 83.  
Lumber, Omaha and Council Bluffs, from southern yellow-pine districts, 532.  
Lumber, Oregon City, Ore., to Cripple Creek, Colo. 554.  
Lumber, Provencal, La., to Santa Rita, N. Mex. 560.  
Lumber, Salem, S. C., to Washington, D. C. 96.  
Lumber, San Francisco from points west of Mississippi River, 301.  
Lumber, San Francisco from points east of Mississippi River, 308.  
Lumber, Washington to Aberdeen, S. Dak., reconsigned to Scranton, N. Dak. 495.  
Lumber, West Virginia and Kentucky, to Windsor, Ont. 162.  
Mining timbers, San Pedro, Cal., to Charleston, Ariz. 430.  
Motorcycles, east of Mississippi River to Pacific coast, 427.  
Nails, El Paso, Tex., to Albuquerque, N. Mex. 57.  
Nails, San Francisco and Stockton, Cal., to Alturas, Cal. 109.  
Nuts, Albuquerque, N. Mex., to El Paso, Tex. 57.  
Oak ties, Texas points to El Paso, Tex., destined beyond, 129.  
Oats, Chicago to Milwaukee, 257.  
Oil, Edgewater, N. J., to Struthers, Pa. 548.  
Oil, Stanards, N. Y., to Struthers, Pa. 380.  
Overalls, Michigan City, Ind., to Beloit, Wis. 261.

## COMMODITIES—Continued.

- Package freight, Hamburg, Germany, to California terminals, 552.  
 Paper, Sartells, Minn., to Los Angeles, Oakland, and San Francisco, 388.  
 Paper stock, demurrage at West Carrollton, Ohio, 178.  
 Partitions, Chicago to Chisholm, Minn., and Marquette, Mich. 165.  
 Peaches, canned, Oakhurst, Ga., to Lexington, Ky., and Cincinnati, Ohio, 210.  
 Pease, Guaymas, Mex., to Philadelphia, 65.  
 Petroleum, Coffeyville, Kans., to Enid, Okla. 389.  
 Petroleum, Coffeyville, Kans., to Memphis and Omaha, 593.  
 Petroleum, Stanards, N. Y., to Struthers, Pa. 380.  
 Piñon nuts, Albuquerque, N. Mex., to El Paso, Tex. 57.  
 Pipe, Stockton, Cal., to Alturas, Cal. 109.  
 Plaster, Cement, Okla., to Leadwood, Mo. 376.  
 Plaster, Gypsum and Council Bluffs, Iowa, to North and South Dakota, 19.  
 Plaster, Norfolk, Nebr., to Nebraska and South Dakota, 105.  
 Plaster board, Garbutt, N. Y., to New York, 374.  
 Plate glass, Chicago to Marquette, Mich. 165.  
 Premiums, Official Classification territory, 566.  
 Print paper, Sartells, Minn., to Los Angeles, Oakland, and San Francisco, Cal. 388.  
 Pulp, demurrage at West Carrollton, Ohio, 178.  
 Pulp wood, demurrage at West Carrollton, 178.  
 Radiators, Detroit, Mich., to Oconomowoc, Wis. 183.  
 Raw sugar, New York to Reidsville, N. C. 197.  
 Refrigerator, Chicago, to Chisholm, Minn. 165.  
 Rice, between Houston and New Orleans, 490.  
 Rock salt, Cuylerville, N. Y., to Detroit, Mich. 259.  
 Rod iron and steel, Terre Haute, Ind., to Louisville, Cincinnati, and Dayton, 601.  
 Roof coating, Paraffin, Cal., to Alturas, Cal. 109.  
 Roofing, iron, Mississippi River to Nowata, Okla. 125.  
 Roofing, Paraffin, Cal., to Alturas, Cal. 109.  
 Roofing paper and materials, Carthage, Ohio, to Nashville, Tenn. 385.  
 Salt, Cuylerville, N. Y., to Detroit, Mich. 259.  
 Salt, Detroit to Buffalo and New York City, 268.  
 Salt, Detroit, Mich., to Memphis, Tenn., Patricksburg, Ind., and Houston, Miss. 245.  
 Salt, West Virginia points to Lynchburg and Roanoke, Va. 51.  
 Sawdust, East Grand Forks, Minn., to Minnewaukan, N. Dak. 530.  
 Scrap iron, St. Louis, Mo., to Canton, Ill. 299.  
 Shoes, loading and unloading at Utica, N. Y. 271.  
 Signboard, Chicago to Wabash, Ind. 185.  
 Sirup, St. Joseph, Mo., to Pullman, Wash. 370.  
 Sirup, San Francisco to Alturas, Cal. 109.  
 Skylight glass, Dunbar, Washington, and Allegheny, Pa., to San Francisco, 202.  
 Smoke coal, Gallup, N. Mex., to El Paso, Tex. 277.  
 Smokestack, Chattanooga, Tenn., to Huntsville, Ala. 150.  
 Snapped corn, Addington and Ninnekah, Okla., to Clarksville, Tex. 580.  
 Snapped corn, Calvin, Okla., to Arkadelphia, Ark. 509.  
 Soft coal, Linton, Ind., to Burlington, Ill., reconsigned to Charles City, Iowa, 195.  
 Sprocket chains, East Moline, Ill., to New Orleans, 500.  
 Staples, St. Louis to Denver, 337.  
 Staples, San Francisco to Alturas, Cal. 109.  
 Staves, St. Louis to Denver, 337.  
 Steam shovel and parts, Coffeyville, Kans., to Toledo, Ohio, 265.  
 Steel, Chicago to Houston, Tex. 208.

## COMMODITIES—Continued.

- Steel, Johnstown, Pa., to Winona, Minn. 334.  
 Steel, Terre Haute, Ind., to Louisville, Cincinnati, and Dayton, 601.  
 Steel, hoop, West Pittsburg, Pa., to Cleveland, reconsigned to Menominee, Mich. 193.  
 Steel plates, Breckenridge, Pa., to Houston, Tex. 529.  
 Stock cattle, South Omaha to Cushman, Mont. 498.  
 Stoves, Lorain, Ohio, to Oconomowoc, Wis. 183.  
 Strawberries, Pomona and Humboldt, Tenn., to St. Louis, 372.  
 Structural steel, Chicago to Houston, Tex. 208.  
 Stucco, Gypsum, Iowa, to Lemmon, S. Dak. 599.  
 Sugar, New Orleans to Columbia, Tenn. 502.  
 Sugar, raw, New York to Reidsville, N. C. 197.  
 Sugar, San Francisco to Alturas, Cal. 109.  
 Tags, loss on bags of cement, 557.  
 Ties, Southport, La., to East St. Louis, 212.  
 Ties, Texas points to El Paso, Tex., destined beyond, 129.  
 Timbers, San Pedro, Cal., to Charleston, Ariz. 430.  
 Tin bottle caps, Baltimore to Denver, 352, 354.  
 Tomatoes, Gibson and Humboldt, Tenn., to Chicago, 540.  
 Tomatoes, canned, Ridgely, Md., to Duluth, Minn. 160.  
 "Triplex cloth," Fort Wayne, Ind., to Beloit, Wis. 261.  
 Vegetables, Albuquerque, N. Mex., to El Paso, Tex. 57.  
 Vegetables, dunnage and loading charges, Tennessee points to Chicago, 540.  
 Vehicle wheels, Racine, Wis., to Prescott, Ariz. 142.  
 Wagons, Louisville, Ky., to Sacramento, Cal. 360.  
 Wagons, Toledo, Ohio, to Portland and Eugene, Oreg., and Seattle, Wash. 360.  
 Wagons, Wagon Works Station, Toledo, Ohio, to Watertown, Wis., Cedarburg, Wis., Tonopah, Nev., and Savannah, Ga. 144.  
 Wheels, Racine, Wis., to Prescott, Ariz. 142.  
 Wire, San Francisco and Stockton, Cal., to Alturas, Cal. 109.  
 Wire fencing, Richmond, Ind., to Billings, Okla., reconsigned to Wichita, Kans. 378.  
 Wood-pulp board, Wabash, Ind., to St. Louis, 91.  
 Wooden bungs in barrels, St. Louis to Denver, 337.  
 Woven-wire fencing, Richmond, Ind., to Billings, Okla., reconsigned to Wichita, Kans. 378.  
 Yellow pine, Omaha and Council Bluffs from southern yellow-pine districts, 532.  
 Yellow pine, Woodson and Little Rock, Ark., to Memphis, 391.

## COMMODITY RATE.

- Higher than class rate not of itself unlawful. *Wheeling Corrugating Co. v. B. & O. R. R. Co.* 125.

## COMPARATIVE RATES.

- Flour made at Detroit from wheat brought by water from Duluth not entitled to same rate to Atlantic coast as wheat from Detroit, originating at Duluth and brought in by water. *Stott v. M. C. R. R. Co.* 582.  
 Snapped corn rate held unreasonable when compared with former relationship to shelled corn rate and which was resumed after shipments moved. *Texas Grain & Elevator Co. v. C. R. I. & P. Ry. Co.* 580.  
 Iron conveyor chains, link belting, and machinery sprocket chains not entitled to same rate as "chains." *Woodward, Wight & Co. v. C. B. & Q. R. R. Co.* 500.  
 Attempted comparison of tin bottle caps with other commodities fails where volume, competition, and other circumstances not shown. *Coors v. S. P. Co.* 352.  
 Public interest does not require distinction to be made in rates between cotton and burnt cotton. *Lesser v. Georgia R. R. et al.* 478.

## COMPARATIVE RATES—Continued.

- Plaster board compared with plaster, and higher rating on former found unjustly discriminatory. *Sackett Plaster Board Co. v. B. R. & P. Ry. Co.* 374.
- Rating on wooden bungs found unreasonable when compared with similar articles of greater value taking less rates. *Zang Brewing Co. v. C. B. & Q. R. R. Co.* 337.
- Egg-case material, not manufactured further than cut to length, should not exceed rate on box lumber. *Anderson-Tully Co. v. C. R. I. & P. Ry. Co.* 48.
- Butter boxes compared with wooden pails, tubs, kits, barrels, kegs, well buckets, and wooden drums. *Roach & Seeber Co. v. C. M. & St. P. Ry. Co.* 172.
- Flour rate, Minneapolis to New York, compared with wheat rate to Buffalo, plus flour rate to New York. *Jennison Co. v. G. N. Ry. Co.* 113.
- Flaxseed screenings shipped in mixed carloads with oats in bulk should take same rate as oats. *Rotsted Co. v. C. & N. W. Ry. Co.* 257.
- Rates on cement, Iowa to North and South Dakota, compared with other commodities in same territory. *Acme Cement Plaster Co. v. C. G. W. Ry. Co.* 19 (20).
- Shipments of "rough rolled, ribbed, or wired skylight glass," not entitled to rate on "skylight glass, n. o. s." *Fuller & Co. v. S. P. Co.* 202.
- Whether snapped corn should always take shelled corn rates not decided. *Texas Grain & Elevator Co. v. C. R. I. & P. Ry. Co.* 580 (581).
- Car earnings on carload of lima beans compared with less valuable carload of potatoes. *Commercial Club of Omaha v. S. P. Co.* 53 (55).
- Rates on cement plaster compared with other commodities in the same territory. *Acme Cement Plaster Co. v. C. & N. W. Ry. Co.* 105 (106).
- Local rate on oak ties compared with lower proportional on pine lumber and ties. *Continental Lumber & Tie Co. v. T. & P. Ry. Co.* 129.
- Sawdust compared with wood for fuel and ordered to take no higher rate than the latter. *Plummer Co. v. N. P. Ry. Co.* 530.
- Commodity rate on lower grade article same as class rate on higher-rated article reduced. *Stone-Ordean-Wells Co. v. S. P. Co.* 13.
- Elm hub blocks in the rough more valuable than hard-wood lumber. *Southern Timber & Land Co. v. S. P. Co.* 232 (233).
- Switching charge on coal compared with other commodities. *Utica Traffic Bureau v. N. Y. O. & W. Ry. Co.* 168 (169).
- Rate on roofing paper and materials compared with wrapping paper. *Chatfield Mfg. Co. v. L. & N. R. R. Co.* 385.
- Rate on oak ties compared with pine ties. *Continental Lumber & Tie Co. v. T. & P. Ry. Co.* 129.
- Ties should not exceed lumber of same kind. *Continental Lumber & Tie Co. v. T. & P. Ry. Co.* 129.
- Acid phosphate compared with phosphate rock. *Bash Fertilizer Co. v. Wabash R. R. Co.* 522.
- Commission will not grade blankets. *Forest City Freight Bureau v. A. A. R. R. Co.* 205.
- Motorcycles compared with bicycles. *Ross v. B. & A. R. R. Co.* 427.

## COMPETING LINES.

- Interests of, must be considered in fixing rates, and not merely that line which could handle the business the cheapest. *Receivers & Shippers Association of Cincinnati v. C. N. O. & T. P. Ry. Co.* 440 (464).
- Lower rates in effect via another line than that taken by a given shipment no measure of reasonableness of rate applied. *Ohio Iron & Metal Co. v. Wabash R. R. Co.* 299 (300).
- Lower rates via another route are not necessarily reasonable via route taken by shipments in a particular case. *Southern Cotton Oil Co. v. A. C. L. R. R. Co.* 275 (276); *Colorado Bedding Co. v. C. B. & Q. R. R. Co.* 403 (404).



**COMPETING LINES—Continued.**

No obligation upon carrier to refuse shipment because of lower rate via another line.

Colorado Bedding Co. *v.* C. B. & Q. R. R. Co. 403.

Lower rate in effect via competing line no measure of rate complained of. Delray Salt Co. *v.* M. C. R. R. Co. 247.

**COMPETITION. See also MARKET COMPETITION; POTENTIAL COMPETITION; and WATER COMPETITION.**

Because on account of competition same rates are accorded competing localities to particular points no reason why they should have same rates to other points where competition not a factor. Colorado Coal Traffic Asso. *v.* C. & S. Ry. Co. 572.

Suggestion that actual competition is necessary in order to produce undue discrimination in rates overlooks requirements of section 1 that all rates shall be reasonable. Penn Tobacco Co. *v.* Old Dominion S. S. Co. 197 (200).

At certain points justifies carrier in rendering assistance in loading and unloading carload freight while refusing to do so at Utica, N. Y. Utica Traffic Bureau *v.* N. Y. C. & H. R. R. Co. 271 (272).

Rail and water competition at Nashville and Decatur, Tenn., justify lower charges on sugar from New Orleans to those points than to Columbia, Tenn. Columbia Grocery Co. *v.* L. & N. R. R. Co. 502.

Other defendants allowed to determine for themselves whether they will meet rates fixed by Commission over one line. Frederick & Kempe Co. *v.* N. Y. N. H. & H. R. R. Co. 481 (484).

What carrier may do to meet competition is one thing, and what it ought to be compelled to do is another thing. Frederick & Kempe Co. *v.* N. Y. N. H. & H. R. R. Co. 481 (484).

Australian coal at Portland, Oreg., requiring same rates as to Idaho points from Wyoming. Idaho Commercial Clubs *v.* O. S. L. R. R. Co. 562 (564).

Existence of, at farther distant point does not excuse unreasonableness *per se* of higher rate. Southern Timber & Land Co. *v.* S. P. Co. 232.

Alleged that greater water, rail, and market competition exists at Chicago than at Detroit in the salt trade. Delray Salt Co. *v.* P. R. R. Co. 259 (260).

Express company handling small packages in competition with United States mail does not violate the act. Williams *v.* Wells, Fargo & Co. 17.

Lower rates to branch line points to meet rail competition. Idaho Commercial Clubs *v.* O. S. L. R. R. Co. 562 (564).

None found as between plaintiff and others to whom preference was alleged. Gund & Co. *v.* C. B. & Q. R. R. Co. 364 (365).

Forced lower rates at certain points to disadvantage of complaining point. Penn Tobacco Co. *v.* Old Dominion S. S. Co. 197 (198).

No competition shown between article complained of and other articles taking lower rates. Coors *v.* S. P. Co. 352 (353).

Justifies rates out of line with rates to points where it does not exist. Rainey & Rogers *v.* St. L. & S. F. R. R. Co. 88 (89).

Rates should be so adjusted as to permit widest possible competition. Andy's Ridge Coal Co. *v.* So. Ry. Co. 405 (410).

Potential, as well as actual, justifies low rates. Kentucky Wagon Mfg. Co. *v.* I. C. R. R. Co. 360.

Tramp lines on the Great Lakes. Jennison Co. *v.* G. N. Ry. Co. 113 (114).

**COMPETITIVE RATE.**

Fact that goods could have been purchased at different point from which lower rate applied no reason for maintenance of unreasonable rate from particular point. Willamette Pulp & Paper Co. *v.* N. P. Ry. 388.

Coal rates are usually highly competitive. Andy's Ridge Coal Co. *v.* So. Ry. Co. 405 (410).

**COMPETITIVE RATE—Continued.**

Lumber rates from Louisiana to Texas highly competitive. *Noble v. V. S. & P. Ry. Co.* 224 (225).

**COMPLAINTS.**

Questions of reasonableness of rate and reparation should be brought in one complaint. *Delray Salt Co. v. M. C. R. R. Co.* 247 (248).

**COMPRESSION IN TRANSIT.**

Carriers may grant, and protect through rates. *Anderson, Clayton & Co. v. C. R. I. & P. Ry. Co.* 340.

**CONCENTRATION.**

Imposition of storage charges by compress company on concentrated cotton not found to justify order against carriers. *Anderson, Clayton & Co. v. C. R. I. & P. Ry. Co.* 340.

Commission gives retroactive effect to privilege by awarding reparation upon promise to install privilege at particular point. *Block & Co. v. L. & N. R. R. Co.* 372.

Privilege of sending l. c. l. shipments to concentration point, regardless of haul or quantity of shipment, for \$5 per car. *Block & Co. v. L. & N. R. R. Co.* 372.

Carriers may grant privilege, and protect through rates. *Anderson, Clayton & Co. v. C. R. I. & P. Ry. Co.* 340.

**CONCESSIONS.**

Bayou City Rice Mills *v. T. & N. O. R. R. Co.* 490.

*Crombie & Co. v. A. T. & S. F. Ry. Co.* 57.

**CONNECTING LINES.**

Initial line failing to transmit instructions does not relieve connecting lines from obligation to carry over cheapest reasonable route. *Duluth & Iron Range R. R. Co. v. C. St. P. M. & O. Ry. Co.* 485.

**CONSTRUCTION OF THE ACT.**

Provisions of the Act were enacted with respect to the American method of stating rates. *Associated Jobbers of Los Angeles v. A. T. & S. F. Ry. Co.* 310 (315).

**CONSUMER.**

Interest of, must be considered as well as that of producer. *Andy's Ridge Coal Co. v. So. Ry. Co.* 406 (410).

**CONTRACT.**

Based on lower rate before advance no ground alone for condemning advance.

*Barnum Iron Works v. C. C. C. & St. L. Ry. Co.* 94; *American Creosote Works v. I. C. R. R. Co.* 212.

Right to contract in reference to demurrage charges removed by the Act. *Peale, Peacock & Kerr v. C. R. R. Co. of N. J.* 25 (33).

**COST OF OPERATION.**

Slight increase does not justify advance of 25 per cent on low-grade commodity.

*Winters Metallic Paint Co. v. C. M. & St. P. Ry. Co.* 596 (598).

**COURT REVIEW.**

Notwithstanding reversal of Commission's former rule by Circuit Court, Commission adheres to its conclusions in the matter of elevator allowances. *Gund & Co. v. C. B. & Q. R. R. Co.* 364 (369).

**CUSTOM.**

No matter how valuable a privilege may have been in the past, custom not determinable of its legality. *Peale, Peacock & Kerr v. C. R. R. Co. of N. J.* 25 (34).

**DAMAGES.**

No general damages awarded. *American Creosote Works v. I. C. R. R. Co.* 212.

**DELAYS.**

Unreasonable delays in transportation should not cause demurrage to accrue.

*Lynch & Read v. B. & O. R. R. Co.* 38.

## DELIVERY.

Extra charge on carload freight at spurs and sidetracks within switching limits, when incident to main-line haul, unlawful; not unlawful when incident to foreign-line haul. *Associated Jobbers of Los Angeles v. A. T. & S. F. Ry. Co.* 310.

Cause of action accrues upon. *Blinn Lumber Co. v. S. P. Co.* 430; *Blodgett Milling Co. v. C. I. & S. R. R. Co.* 439.

## DEMURRAGE.

Free time allowance does not follow car on sold or reconsigned shipments if original consignee is operating under average plan; not so when under straight demurrage. *Lynah & Read v. B. & O. R. R. Co.* 38.

Ordinarily accrues only upon delivery at point specified in bill of lading, and when imposed at other points there must be definite tariff authority therefor. *United States v. D. & R. G. R. R. Co.* 7 (9).

None on shipment held in transit because consigned to prepay station on connecting line on which charges were not prepaid. *Tioga Coal Co. v. C. R. I. & P. Ry. Co.* 414.

Claim for refund of charges accruing on lumber in Washington, D. C., denied, delay being through no fault of carrier. *German Co. v. P. B. & W. R. R. Co.* 96.

Carrier may assess reasonable charge; if coercive measures necessary, they will be viewed with favor. *Peale, Peacock & Kerr v. C. R. R. Co. of N. J.* 25 (35).

Cancellation of average plan and reestablishment thereof causing accrual of demurrage. *Friend Paper Co. v. C. C. C. & St. L. Ry. Co.* 178.

Unreasonable delays in transporting coal to the ports by railroad should not cause demurrage against consignees. *Lynah & Read v. B. & O. R. R. Co.* 38.

Accruing at billed destination before reconsignment on account of nonpayment of reconsignment charges. *Sage & Co. v. I. C. R. R. Co.* 195.

Regulations governing Locust Point and Curtis Bay, Md., discriminatory in part. *Lynah & Read v. B. & O. R. R. Co.* 38.

Should not be so liberal as to defeat the end sought to be attained. *Peale, Peacock & Kerr v. C. R. R. Co. of N. J.* 25 (36).

Commission declines to extend average demurrage period to one year. *Peale, Peacock & Kerr v. C. R. R. Co. of N. J.* 25.

Right to contract in reference to, removed by the Act. *Peale, Peacock & Kerr v. C. R. R. Co. of N. J.* 25 (33).

Duty of regulating, lodged with Commission. *Peale, Peacock & Kerr v. C. R. R. Co. of N. J.* 25 (33).

Held not properly assessable under tariff provisions. *United States v. D. & R. G. R. R. Co.* 7.

Collected without tariff authority, unlawful. *Tioga Coal Co. v. C. R. I. & P. Ry. Co.* 414.

## DESTINATION.

Carrier may not lawfully make rates lower to given point on traffic destined beyond by wagon or other similar conveyance. *Bayou City Rice Mills v. T. & N. O. R. R. Co.* 490 (493).

One factor of combination through charge found unreasonable and ordered reduced, applicable on traffic for beyond. *Stone-Ordean-Wells Co. v. S. P. Co.* 13, 15.

Proportional rate ordered, lower than local, on corn from Enfield to Henderson, destined beyond. *Henderson Elevator Co. v. L. & N. R. R. Co.* 538.

## DIFFERENTIAL.

Discrimination, though found to exist, not removed because it would involve establishment of differential state rate under interstate rate. *Andy's Ridge Coal Co. v. So. Ry. Co.* 405 (407).

Rate to Cartersville, Ga., made a certain differential over Atlanta in accordance with general adjustment. *Southern Cotton Oil Co. v. A. C. L. R. R. Co.* 275.

**DIFFERENTIAL—Continued.**

- Prayer for increase as between Coal Creek and Appalachia fields to Carolina territory denied. *Andy's Ridge Coal Co. v. So. Ry. Co.* 405.
- Combination rate charged, which exceeded through rate plus differential, unreasonable. *Ocheltree Grain Co. v. T. & P. Ry. Co.* 412.
- Increased from Coal Creek field under Appalachia field to Georgia and Florida territory. *Andy's Ridge Coal Co. v. So. Ry. Co.* 405.
- Between Coal Creek and Appalachia fields should be greater to Nashville. *Andy's Ridge Coal Co. v. So. Ry. Co.* 405.
- Between competing coal mines not established upon distance alone. *Andy's Ridge Coal Co. v. So. Ry. Co.* 405 (407).

**DISCRIMINATION.**

- Ownership of C. N. O. & T. P. Ry. Co. by Southern Ry. Co. can not make former guilty of discrimination by maintaining higher rates from Chicago and Cincinnati to southeastern territory than the latter from northern territory to same destinations. *Receivers & Shippers Asso. of Cincinnati v. C. N. O. & T. P. Ry. Co.* 440 (457).
- Discriminatory to grant to other shippers privilege of including advertising matter and articles in packages of merchandise and to refuse same or similar privilege to complainant. *Ouerbacker Coffee Co. v. So. Ry. Co.* 566.
- Suggestion that actual competition is necessary in order to produce undue discrimination in rates overlooks requirements of section 1 that all rates shall be reasonable. *Penn Tobacco Co. v. Old Dominion S. S. Co.* 197 (200).
- If basing point system adopted it must be applied alike to all places where real dissimilarity of circumstances or controlling competition do not exist. *Columbia Grocery Co. v. L. & N. R. R. Co.* 502 (505).
- Prayer for reparation based on discrimination in making elevator allowances to complainant's competitors suspended during final adjudication of matter in Supreme Court. *Gund & Co. v. C. B. & Q. R. R. Co.* 364.
- Commission has full power to remove unjust discrimination resulting from a rule or practice as well as that resulting from a rate. *Ouerbacker Coffee Co. v. So. Ry. Co.* 566 (570).
- Terre Haute, Ind., to Louisville, Cincinnati, and Dayton, compared with Pittsburg, Cleveland, and other points, iron and steel. *Highland Iron & Steel Co. v. Vandalia R. R. Co.* 601.
- No competitive relationship shown between complainant and those to whom preference was alleged to have been given. *Gund & Co. v. C. B. & Q. R. R. Co.* 364 (365).
- Higher rating on plaster board than on plaster found discriminatory and less difference prescribed. *Sackett Plaster Board Co. v. B. R. & P. Ry. Co.* 374.
- Carrier serving Utica, N. Y., and not certain other points can not discriminate in favor of latter. *Utica Traffic Bureau v. N. Y. C. & H. R. R. Co.* 271 (272).
- None where lower state rate forced by state commission which appears unreasonably low. *Saunders & Co. v. Southern Express Co.* 415.
- Commission no power to lay embargoes; power limited to removal of discriminations. *Peale, Peacock & Kerr v. C. R. R. Co. of N. J.* 25 (34).
- Unjustly discriminatory to fail to give Locust Point and Curtis Bay as liberal free time as Philadelphia. *Lynah & Read v. B. & O. R. R. Co.* 38.
- Carrier can not discriminate against point not located on its own line. *Friend Paper Co. v. C. C. C. & St. L. Ry. Co.* 178.
- Preference not chargeable against defendants because they do not serve favored points. *National Petroleum Asso. v. M. P. Ry. Co.* 593. (594).
- Reparation awarded on account of discrimination between localities. *Stacy Mercantile Co. v. M. St. P. & S. Ste. M. Ry. Co.* 550.

**DISCRIMINATION—Continued.**

- Proportional rate should not be limited to traffic from particular places. *Bayou City Rice Mills v. T. & N. O. R. R. Co.* 490 (493).  
 None can be found in favor of point to which commodity involved never moved. *Consumers' Ice Co. v. A. T. & S. F. Ry. Co.* 277.  
 Commission can not remove by reducing state rate. *Andy's Ridge Coal Co. v. So. Ry. Co.* 405 (407).  
 Removed by reduction of rate. *National Rolling Mill Co. v. B. & O. S. W. R. R. Co.* 604.

**DISCRIMINATION—CLASSIFIED LIST.****ARTICLES:**

- American Creosote Works v. I. C. R. R. Co.* 212.  
*Forest City Freight Bureau v. A. A. R. R. Co.* 205.  
*Ouerbacker Coffee Co. v. So. Ry. Co.* 566.  
*Sackett Plaster Board Co. v. B. R. & P. Ry. Co.* 374.

**LOCALITIES:**

- Acme Cement Plaster Co. v. C. G. W. Ry. Co.* 19.  
*American Creosote Works v. I. C. R. R. Co.* 212.  
*Andy's Ridge Coal Co. v. So. Ry. Co.* 405.  
*Associated Jobbers of Los Angeles v. A. T. & S. F. Ry. Co.* 310.  
*Bayou City Rice Mills v. T. & N. O. R. R. Co.* 490.  
*Clark Co. v. B. & S. Ry. Co.* 380.  
*Colorado Coal Traffic Asso. v. C. & S. Ry. Co.* 572.  
*Columbia Grocery Co. v. L. & N. R. R. Co.* 502.  
*Consumers' Ice Co. v. A. T. & S. F. Ry. Co.* 277.  
*Copper Queen Consolidated Mining Co. v. B. & O. R. R. Co.* 154.  
*Delray Salt Co. v. P. R. R. Co.* 259.  
*Frederich & Kempe Co. v. N. Y. N. H. & H. R. R. Co.* 481.  
*Friend Paper Co. v. C. C. C. & St. L. Ry. Co.* 178.  
*Greater Des Moines Committee v. C. G. W. Ry. Co.* 98.  
*Greater Des Moines Committee v. C. M. & St. P. Ry. Co.* 73.  
*Gund & Co. v. C. B. & Q. R. R. Co.* 364.  
*Henderson Elevator Co. v. L. & N. R. R. Co.* 538.  
*Highland Iron & Steel Co. v. Vandalia R. R. Co.* 601.  
*Idaho Commercial Clubs v. O. S. L. R. R. Co.* 563.  
*Jennison Co. v. G. N. Ry. Co.* 113.  
*Lynah & Read v. B. & O. R. R. Co.* 38.  
*National Petroleum Asso. v. M. P. Ry. Co.* 593.  
*National Rolling Mill Co. v. B. & O. S. W. R. R. Co.* 604.  
*Peale, Peacock & Kerr v. C. R. R. Co. of N. J.* 25.  
*Penn Tobacco Co. v. Old Dominion S. S. Co.* 197.  
*Rainey & Rogers v. St. L. & S. F. R. R. Co.* 88.  
*Receivers & Shippers Asso. of Cincinnati v. C. N. O. & T. P. Ry. Co.* 440.  
*Sackett Plaster Board Co. v. B. R. & P. Ry. Co.* 374.  
*Saunders & Co. v. Southern Express Co.* 415.  
*Schultz-Hansen Co. v. S. P. Co.* 234.  
*Stacy Mercantile Co. v. M. St. P. & S. Ste. M. Ry. Co.* 550.  
*Stott v. M. C. R. R. Co.* 582.  
*Utica Traffic Bureau v. N. Y. C. & H. R. R. R. Co.* 271.

**PERSONS:**

- Eschner v. P. R. R. Co.* 60.  
*Ouerbacker Coffee Co. v. So. Ry. Co.* 566.

**DISTANCE.**

Closer proximity of Des Moines to the Dakotas and Minnesota than other Iowa points and Chicago not alone sufficient. Greater Des Moines Committee *v.* C. M. & St. P. Ry. Co. 73.

Commodity rate to one point over one line no basis of comparison with higher class rate to longer-distance point over two lines. Wells-Higman Co. *v.* St. L. I. M. & S. Ry. Co. 175 (176).

Rates established by Commission on distance scale. Virginia-Carolina Chemical Co. *v.* St. L. I. M. & S. Ry. Co. 1; Same *v.* C. R. I. & P. Ry. Co. 3; Same *v.* St. L. & S. F. R. R. Co. 5.

We can not sustain contention which amounts to a demand for readjustment of rates solely on basis of distance. Delray Salt Co. *v.* M. C. R. R. Co. 268 (270).

Distance upon the water is less a factor than upon land. Receivers & Shippers Asso. of Cincinnati *v.* C. N. O. & T. P. Ry. Co. 440 (455).

Distance alone considered, rate complained of appears to be excessive. Glavin Grain Co. *v.* C. & N. W. Ry. Co. 241.

Differentials not established upon distance alone. Andy's Ridge Coal Co. *v.* So. Ry. Co. 405 (407).

**DIVERSION.**

Failure of initial line to divert from routing instructions upon request. National Mfg. Co. *v.* C. G. W. Ry. Co. 370.

**DIVISIONS.**

Joint through rate found unreasonable and lower rate prescribed, divisions of reparation to be fixed by Commission if carriers fail to agree. Stone-Ordean-Wells Co. *v.* S. P. Co. 15 (16).

May be considered in determining legality of total joint through rate complained of. Copper Queen Consolidated Mining Co. *v.* B. & O. R. R. Co. 154 (157.)

Roads participating in collection of unreasonable rates should refund on basis of divisions. National Mfg. Co. *v.* C. G. W. Ry. Co. 370 (371).

Joint through rates are units or entireties; complaint may not attack divisions thereof. Copper Queen Consolidated Mining Co. *v.* B. & O. R. R. Co. 154.

Delay in agreeing upon should not cause shipper to suffer. Willamette Pulp & Paper Co. *v.* N. P. Ry. Co. 388.

**DUNNAGE.**

Charge for on fruits and vegetables from Tennessee points to Chicago not found unreasonable. Davies *v.* L. & N. R. R. Co. 540.

**EARNINGS.**

A road is entitled to a fair return upon the value of property devoted to public use, but it is not entitled to have that property paid for by the public. Receivers & Shippers Asso. of Cincinnati *v.* C. N. O. & T. P. Ry. Co. 440 (462).

Pullman Company's earnings high. Loftus *v.* Pullman Co. 135.

**ELEVATOR ALLOWANCES.**

Prayer for reparation based upon discrimination in making elevator allowances to complainant's competitors suspended during final adjudication of matter in Supreme Court. Gund & Co. *v.* C. B. & Q. R. R. Co. 364.

Commission adheres to view that they are unlawful. Gund & Co. *v.* C. B. & Q. R. R. Co. 364.

**EMBARGO.**

Commission no power to lay; only power to remove discrimination. Peale, Peacock & Kerr *v.* C. R. R. Co. of N. J. 25 (34).

**END LOADING.** See **LOADING.**

**EQUALIZING RATES.**

Carriers should not be required to equalize commercial conditions. Colorado Coal Traffic Asso. *v.* C. & S. Ry. Co. 572.

**EQUIPMENT.**

Frequently considered, but Commission can not go to extent of considering subordinate grades used in transportation. *Bash Fertilizer Co. v. Wabash R. R. Co.* 522 (524).

**ERROR.**

In tariff. *Delray Salt Co. v. D. T. & I. Ry. Co.* 245 (246); *Clark Co. v. B. & S. Ry. Co.* 380 (381); *Colorado Bedding Co. v. C. B. & Q. R. R. Co.* 401 (402); *Colorado Coal Traffic Asso. v. C. & S. Ry. Co.* 572 (575).

Of agent. *D. & I. R. R. Co. v. C. St. P. M. & O. Ry. Co.* 485 (487); *Pankey & Holmes v. Cent. N. E. Ry. Co.* 578 (579).

Of carrier's agent, neither shipper nor his agent responsible. *Vulcan Steam Shovel Co. v. M. P. Ry. Co.* 265 (266).

**ESTIMATED WEIGHT.**

Charging on actual weight to complainant and estimated weight to competitors found discriminatory. *American Creosote Works v. I. C. R. R. Co.* 212.

**ESTOPPEL.**

There can be no such thing as judicial estoppel in proceedings of this Commission, since its orders are not judgments, nor is it a judicial body. *Receivers & Shippers Asso. of Cincinnati v. C. N. O. & T. P. Ry. Co.* 440 (444).

**EVIDENCE.**

All must concede weight and force to be attached to explanations given by railroad officials for fixing particular rates. *Penn Tobacco Co. v. Old Dominion S. S. Co.* 197 (199).

**EX-LAKE RATES.**

From Buffalo, lower than locals, not conclusive but highly illustrative of reasonableness of locals. *Jennison Co. v. G. N. Ry. Co.* 113 (124).

Lower than local; no opinion expressed as to legality. *Stott v. M. C. R. R. Co.* 582 (587).

**EXCHANGE ORDERS.**

Issued voluntarily, and carriers may therefore attach reasonable and nondiscriminatory regulations to their use. *Eschner v. P. R. R. Co.* 60.

**EXPRESS COMPANY.**

Handling small packages in competition with the mails does not violate the Act. *Williams v. Wells Fargo & Co.* 17.

**EXTRA CHARGES.**

Whenever any service is rendered beyond ordinary receiving, transporting, and delivering of freight, the precise character of that service should appear in the printed schedule. *Schultz-Hansen Co. v. S. P. Co.* 234 (237).

Service of loading, furnishing material, and placing in cars is additional service for which carriers are entitled to receive reasonable compensation. *Davies v. L. & N. R. R. Co.* 540.

Carrier may not so construct its rates as to compel an extra charge for like service. *Associated Jobbers of Los Angeles v. A. T. & S. F. Ry. Co.* 310 (318).

Throughout the country loading and unloading carload freight is considered extra service if performed by carriers. *Schultz-Hansen Co. v. S. P. Co.* 234 (239).

An additional charge may be made when an additional service is given. *Associated Jobbers of Los Angeles v. A. T. & S. F. Ry. Co.* 310 (318).

**FALSE BILLING. See also MISBILLING.**

Possibility or probability of misrepresentation of article is one of numerous considerations of prime importance in classification. *Forest City Freight Bureau v. A. A. R. R. Co.* 205 (206).

**FILING TARIFFS.**

Condition to application of rate, which could have been complied with, filed with Commission but not posted. Undercharge collected ordered refunded. *Kiel Woodenware Co. v. C. M. & St. P. Ry. Co.* 242.

**FIRE.**

Shipment into transit point destroyed by fire; no reparation on inbound charges or extension of time on substituted outbound movement. *Henderson & Barkdull v. St. L. I. M. & S. Ry. Co.* 514.

**FLAT RATES.**

If carriers will yield somewhat in the matter of local rates to and from transit points, it will be possible to make such rates equal to the present published transit rates in many cases without serious loss of income. *In re Substitution of Tonnage*, 280.

**FOREIGN COMMERCE.**

No joint through rates recognized with water carriers to foreign countries beyond the seas. *Borgfeldt & Co. v. S. P. Co.* 552.

**FORWARDING COMPANY.**

At end of line acting as agents for consignees. *Lauer & Son v. S. P. Co.* 109.

**FREE TIME.**

Does not follow car on sold or reconsigned shipments if original consignee operating under average plan; not so when under straight demurrage. *Lynah & Read v. B. & O. R. R. Co.* 38.

Unjustly discriminatory to fail to give Locust Point and Curtis Bay as liberal free time as Philadelphia. *Lynah & Read v. B. & O. R. R. Co.* 38.

Suggested computation on an average at different ports, and extension to one year average, denied. *Lynah & Read v. B. & O. R. R. Co.* 38.

Fact that it *might* be easily extended no reason that it *must* be. *Peale, Peacock & Kerr v. C. R. R. Co. of N. J.* 25 (35).

Consignee's delay in furnishing vessel should not be included in free time allowed. *Lynah & Read v. B. & O. R. R. Co.* 38.

Carrier should grant reasonable time for unloading. *Peale, Peacock & Kerr v. C. R. R. Co. of N. J.* 25 (35).

Rule for computation of free time at New Jersey harbors. *Peale, Peacock & Kerr v. C. R. R. Co. of N. J.* 25.

**FUTURE RATES.**

Under Hepburn Act of 1906 Commission was invested with jurisdiction to establish a rate for the future. *Receivers & Shippers Asso. of Cincinnati v. C. N. O. & T. P. Ry. Co.* 440 (443).

**GRADES.**

Affecting similarity of circumstances and conditions. *Clark Co. v. B. & S. Ry. Co.* 380 (381); *League of Southern Idaho Commercial Clubs v. O. S. L. R. R. Co.* 562 (564).

**ICING CHARGES.**

Double icing made necessary by misrouting, ordered refunded. *Platten Produce Co. v. K. L. S. & C. Ry. Co.* 249.

**IMPORT.**

Shipment under through bills to inland destination; before arrival through rate canceled, leaving effective local from port higher than proportion. Rule 111 followed. *Borgfeldt & Co. v. S. P. Co.* 552.

**INDUSTRIAL RATES.**

Within certain limits railroad company is bound to protect its territory, and within those limits Commission may consider rates and their effect upon movement of traffic. *Receivers & Shippers Asso. of Cincinnati v. C. N. O. & T. P. Ry. Co.* 440.

Within proper limitations carrier may make low rates to induce movement which would not otherwise occur. *Consumers' Ice Co. v. A. T. & S. F. Ry. Co.* 277 (278).

Low rate put in for purpose of inducing movement found too low and advanced. *Southern Cotton Oil Co. v. A. C. L. R. R. Co.* 275 (276).



**INDUSTRIAL SIDING.**

Delivery of car upon industrial siding found to be a substitute for delivery upon public team tracks, and, no additional service being involved, can not be made the basis for an additional charge. *Associated Jobbers of Los Angeles v. A. T. & S. F. Ry. Co.* 310.

**INFORMAL COMPLAINT.**

Directed against switching charge, does not operate to stop running of statute against claim of unreasonableness of through rate. *Acme Cement Plaster Co. v. St. L. & S. F. R. R. Co.* 376.

Filing of, when containing sufficient information, stops running of statute of limitation. *Memphis Freight Bureau v. St. L. S. W. Ry. Co.* 67.

Stops running of statute of limitations. *Fathauer Co. v. St. L. I. M. & S. Ry. Co.* 517 (520).

**INFORMAL DOCKET.**

Case transferred to, for reparation. *Crombie & Co. v. A. T. & S. F. Ry. Co.* 57.

**INITIAL LINE.**

Small initial lines should be partially relieved of responsibility for correct routing.

*Duluth & Iron Range R. R. Co. v. C. St. P. M. & O. Ry. Co.* 485.

Liability for failure to divert from routing instructions upon request. *National Mfg. Co. v. C. G. W. Ry. Co.* 370.

Solely liable for misrouting, though relying on quotation of connections. *Cameron & Co. v. T. & P. Ry. Co.* 560.

**INJUNCTION.**

No power in Commission to enjoin collection of lawful tariff charges for services rendered. *Peale, Peacock & Kerr v. C. R. R. Co. of N. J.* 25.

**INLAND PROPORTION.**

Through rate from foreign country canceled, leaving effective local higher than inland division. *Borgfeldt & Co. v. S. P. Co.* 552.

**INSTRUCTIONS.** See also **SHIPPER'S INSTRUCTIONS.**

If shipper in doubt as to cheapest route, he should tender shipment without instructions. *Spreckels Bros. Commercial Co. v. Monongahela R. R. Co.* 190 (191).

Facts found to justify inference that complainant's agent gave instructions which were followed. *Gamble Robinson Commission Co. v. C. B. & Q. R. R. Co.* 357.

Routing directed by shipper under erroneous information from carrier no ground for relief. *Spreckels Bros. Commercial Co. v. Monongahela R. R. Co.* 190.

Shipper designated "lowest all-rail" route, while there was lower "rail-and-water" route; no misrouting. *Hollingshead & Blei Co. v. P. & L. E. R. R. Co.* 193.

Part of intermediate instructions not available; change followed, but other original instructions not followed. *Cressey & Co. v. C. M. & St. P. Ry. Co.* 132.

Lines designated but shipment did not follow accustomed route via those lines: Held, misrouting. *Platten Produce Co. v. K. L. S. & C. Ry. Co.* 249.

Initial line ought to pass along to connections. *Duluth & Iron Range R. R. Co. v. C. St. P. M. & O. Ry. Co.* 485.

Where given, if followed, no liability on carrier for misrouting. *Wilburine Oil Works v. P. R. R. Co.* 548 (549).

Shipper's instructions followed; no reparation. *Stone-Ordean-Wells Co. v. P. B. & W. R. R. Co.* 160.

**INTERMEDIATE ROUTING.**

Intermediate line found guilty of misrouting in not forwarding unrouted shipment over cheapest route. *Noble v. T. & W. R. R. Co.* 494.

**INTERSTATE COMMERCE.**

Shipment intended for interstate point on line under construction, billed to intrastate point, part removed, balance reforwarded later under new bill. First shipment held intrastate commerce. *Henley v. C. M. & St. P. Ry. Co.* 382.

**INTERSTATE COMMERCE—Continued.**

Interstate shipment accepted, charges paid, and reforwarded to point within same state. Second shipment not interstate. *Wells-Higman Co. v. St. L. I. M. & S. Ry. Co.* 175 (176).

Shipment between two points in same state passing out of the state is interstate. *Wells-Higman Co. v. St. L. I. M. & S. Ry. Co.* 175 (176).

**INTERVENERS.**

*Andy's Ridge Coal Co. v. So. Ry. Co.* 405.

*Commercial Club of Omaha v. A. & S. R. Ry. Co.* 532.

*Jennison Co. v. G. N. Ry. Co.* 113.

*Receivers & Shippers Asso. of Cincinnati v. C. N. O. & T. P. Ry. Co.* 440.

*Thompson Lumber Co. v. I. C. R. R. Co.* 83.

**INVESTIGATION.**

General readjustment over considerable territory not made upon incomplete record. *Greater Des Moines Committee v. C. M. & St. P. Ry. Co.* 73.

**JOINT THROUGH RATE.**

Joint through rates are units or entireties; complaint may not be directed solely against division thereof. *Copper Queen Consolidated Mining Co. v. B. & O. R. R. Co.* 154.

Not recognized between water carriers from foreign countries and rail lines to inland destinations. *Borgfeldt & Co. v. S. P. Co.* 552.

Takes precedence over combination of proportional and local. *Delray Salt Co. v. D. T. & I. Ry. Co.* 245.

Reasonableness not determinable by consideration of factors not filed with Commission. *Milburn Wagon Co. v. L. S. & M. S. Ry. Co.* 144 (146).

**JURISDICTION.**

Shipment billed to intrastate point; rebilled to interstate point. Allegation of unreasonableness of first rate not in Commission's jurisdiction. *Dobbs v. L. & N. R. R. Co.* 210.

Joint through rates from foreign ports to interior points of destination not recognized. *Borgfeldt & Co. v. S. P. Co.* 552.

**KNOCKED DOWN.**

Barrel material, consisting of hoops, staves, headings, and staples, should take rate not exceeding rate on beer kegs, set up. *Zang Brewing Co. v. C. B. & Q. R. R. Co.* 337.

**KNOWLEDGE.**

Shippers are presumed to know the rates and have access to tariffs, which are required to be kept in railroad offices. *Ohio Iron & Metal Co. v. Wabash R. R. Co.* 299 (300).

Failure of as to demurrage regulations no ground for waiving. *Peale, Peacock & Kerr v. C. R. R. Co. of N. J.* 25 (33).

**LEGAL RATE.**

No claim for misrouting predicated upon failure to obey instructions where factor in designated route not on file with Commission. *De Barry & Co. v. Louisiana Western R. R. Co.* 527.

Loading on tap line between terminal and junction; *Held*, rate from junction should apply, but allowance unlawful. *Fathauer Co. v. St. L. I. M. & S. Ry. Co.* 517.

Published schedules must govern, though carrier's agent may have made statements at variance therewith. *Snyder-Malone-Donahue v. C. B. & Q. R. R. Co.* 498 (499).

Neither misquotation, contract, or decision of court on reasonableness thereof can alter legal rate to be charged. *Blinn Lumber Co. v. S. P. Co.* 430 (433).

Tariff filed with Commission, not posted; undercharge collected ordered refunded. *Kiel Woodenware Co. v. C. M. & St. P. Ry. Co.* 242.

## LEGAL RATE—Continued.

- Tariff of delivering line conflicting with that of initial line unlawful. *Sunderland Bros. Co. v. M. K. & T. Ry. Co.* 425.
- Specific joint through rate takes precedence over proportional rate added to local. *Delray Salt Co. v. D. T. & I. Ry. Co.* 245.
- Lower rates constructed in unlawful manner no basis for reparation from higher rates. *Lauer & Son v. S. P. Co.* 109 (111).
- Through rate may not be constructed of factors not on file with Commission. *Hagar Iron Co. v. P. R. R. Co.* 529.

## LIMITATION.

- Amended petition asking for reparation allowed, but limitation runs to date of amendment. *Virginia-Carolina Chemical Co. v. St. L. I. M. & S. Ry. Co.* 1 (2); *Same v. C. R. I. & P. Ry. Co.* 3 (4); *Same v. St. L. & S. F. R. R. Co.* 5 (6).
- Shipment to intrastate point, accepted, then forwarded to interstate point. Claim as to second shipment not presented within two years. *Held*, barred. *Henley v. C. M. & St. P. Ry. Co.* 382.
- Favorable decision on complaint by State does not stop running of statute against individual claims not presented in first case. *National Refining Co. v. A. T. & S. F. Ry. Co.* 389.
- Does not cease to run against claim of excessive rate where informal complaint presented only reasonableness of switching charge. *Acme Cement Plaster Co. v. St. L. & S. F. R. R. Co.* 376.
- No order can be made against road participating in movement against whom claim not made by making a party of record. *Ocheltree Grain Co. v. T. & P. Ry. Co.* 412 (413).
- Filing of informal complaint containing all material allegations sufficient to stop running of statute. *Memphis Freight Bureau v. St. L. S. W. Ry. Co.* 67.
- Dismissal of complaint would cause statute of limitations to run against complainant's claim. *Gund & Co. v. C. B. & Q. R. R. Co.* 364 (369).
- Refusal to pay charges upon delivery can not extend period. *Blinn Lumber Co. v. S. P. Co.* 430; *Blodgett Milling Co. v. C. I. & S. R. R. Co.* 439.
- Informal complaint stops running of statute. *Fathauer Co. v. St. L. I. M. & S. Ry. Co.* 517 (520).
- Cause of action accrues on date of delivery. *Blinn Lumber Co. v. S. P. Co.* 430.
- LOADING.** See also **UNLOADING.**
- Rule applying first-class rate and minimum of 5,000 pounds to articles too large to be loaded through side door of 36-foot box car, or too long to be loaded through end window thereof, found unreasonable. *Houston Structural Steel Co. v. Wabash R. R. Co.* 208.
- Rule that charges on L. C. L. shipment too long to be loaded through side door of box car 36 feet in length will be assessed on minimum of 4,000 pounds found unreasonable. *Jones v. So. Ry. Co.* 150; *Brunswick-Balke-Collender Co. v. C. M. & St. P. Ry. Co.* 165.
- Rule withdrawing certain assistance by carrier at Utica, N. Y., while retaining it at certain other points, not found unreasonable. *Utica Traffic Bureau v. N. Y. C. & H. R. R. R. Co.* 271.
- Rule as to rating of articles too long to be loaded through side door of box car found unreasonable. *Knox v. Wabash R. R. Co.* 185; *Houston Structural Steel Co. v. Wabash R. R. Co.* 208.
- Assistance by carriers on particular commodities at specified points not necessarily discriminatory where circumstances different. *Schultz-Hansen Co. v. S. P. Co.* 234.
- Not improper to make reasonable charge for loading carload freight, provided service clearly stated in tariff. *Schultz-Hansen Co. v. S. P. Co.* 234.

## LOADING—Continued.

Fruits and vegetables at Tennessee points, for Chicago, charge not found unreasonable. *Davies v. L. & N. R. R. Co.* 540.  
 Cement plaster loads readily to marked capacity of car. *Acme Cement Plaster Co. v. C. & N. W. Ry. Co.* 105 (106).  
 Shippers generally required to load carload freight. *Schultz-Hansen Co. v. S. P. Co.* 234 (235).

## LOCAL RATES.

In absence of joint rate from local station on one line to point on another line, it is not incumbent on initial line to post at point of origin tariffs showing combination of locals. *Canadian Valley Grain Co. v. C. R. I. & P. Ry. Co.* 509.  
 No joint rate; local rate within State when from out of the State, established. *Acme Cement Plaster Co. v. C. & N. W. Ry. Co.* 105.

## LOCALITIES.

Aberdeen, S. Dak., to Scranton, N. Dak., lumber, 495.  
 Addington, Okla., to Clarksville, Tex., snapped corn, 580.  
 Ainsworth, Nebr., from Christopher, Ill., coal, 512.  
 Akron, Colo., from Chicago, Ill., anthracite coal, 11.  
 Alabama points from Pensacola, Fla., fish, 415.  
 Albuquerque, N. Mex., to and from El Paso, Tex., class and commodity rates, 57.  
 Allegheny, Pa., to San Francisco, skylight glass, 202.  
 Alturas, Cal., from Paraffin, Cal., roofing and coating, 109.  
 Alturas, Cal., from San Francisco, nails, wire, and products, sirup and sugar, 109.  
 Alturas, Cal., from Stockton, Cal., pipe, nails, iron and wire, 109.  
 Amherst, Wis., from Minneapolis, reconsigned to Marshfield, Wis., bran, 355.  
 Angola, N. Y., to Pacific coast terminals, motorcycles, 427.  
 Antwerp, Belgium, to Seattle, Wash., champagne, 527.  
 Arkadelphia, Ark., from Calvin, Okla., snap corn, 509.  
 Arkansas points from Memphis, Tenn., fertilizer, 1, 3, 5.  
 Ash Grove, Mo., to Pine Bluffs and Laramie, Wyo., lime, 545.  
 Armour, S. Dak., to Lemmon, S. Dak., forwarded to Hettinger, N. Dak., emigrant movables, 382.  
 Augusta, Ga., to Lockland, Ohio, burnt cotton, 478.  
 Aurora, Ill., to Pacific coast terminals, motorcycles, 427.  
 Baltimore, Md. (Curtis Bay and Locust Point), demurrage regulations, 38.  
 Baltimore to Denver, bottle caps, 352, 354.  
 Baltimore to Prairie Switch, Ind., acid phosphate, 522.  
 Belle Fourche, S. Dak., from Walsenburg, Colo., coal, 572.  
 Beloit, Wis., from Fort Wayne, Ind., Michigan City, Ind., Cincinnati, Ohio, and Wheeling, W. Va., cotton goods, 261.  
 Beulah, Kans., to Memphis, reconsigned to Gulfport, Miss., corn, 228.  
 Billings, Okla., from Richmond, Ind., woven-wire fencing, 378.  
 Billings, Okla., to Wichita, Kans., woven-wire fencing, 378.  
 Birmingham, Ala., from Elizaville and Mount Ross, N. Y., apples, 578.  
 Birmingham, Ala., from Pensacola, Fla., fish, 415.  
 Black Earth, from Chicago, agricultural implements, 222.  
 Blissville, Ark., to Chicago, lumber, 517.  
 Boise, Idaho, from Rock Springs, Kemmerer, and Diamondville, Wyo., coal, 562.  
 Breckenridge, Pa., to Houston, Tex., steel plates, 529.  
 Brighton, Ohio, to Tombstone, Ariz., fences, 94.  
 Buffalo from Detroit, salt, 268.  
 Buffalo to Prairie Switch, Ind., acid phosphate, 522.  
 Buhl, Idaho, from Rock Springs, Kemmerer and Diamondville, Wyo., coal, 562.  
 Burley, Idaho, from Diamondville, and Rock Springs, Wyo., Kemmerer, coal, 562.

## LOCALITIES—Continued.

- Burlington, Ill., from Linton, Ind., reconsigned to Charles City, Iowa, soft coal, 195.  
 Cairo, Ill., and Waco, Tex., passenger fare, 187.  
 Caldwell, Idaho, from Diamondville, Kemmerer and Rock Springs, Wyo., coal, 562.  
 California points to Alturas and Likely, Cal., hardware, 109.  
 California points to Denver, Colo., harness leather, 220.  
 California points to Omaha, lima beans, 53.  
 California terminals from Hamburg, Germany, package freight, 552.  
 Calvin, Okla., to Arkadelphia, Ark., snap corn, 509.  
 Canton, Ill., from St. Louis, Mo., scrap iron, 299.  
 Carbon Hill district, Ala., to New Albany, Miss., coal, 88.  
 Carolina territory from Coal Creek field, Tenn., coal, 405.  
 Cartersville, Ga., from Fayetteville, N. C., cotton-seed hulls, 275.  
 Carthage, Ohio., to Nashville, roofing paper and materials, 385.  
 Cedarburg, Wis., from Wagon Works station, Toledo, Ohio, wagons, 144.  
 Cement, Okla., to Leadwood, Mo., cement plaster, 376.  
 Chadron, Nebr., from Walsenburg Dist., Colo., coal, 572.  
 Chanute, Kans., to Denison, Iowa, cement, 425.  
 Charles City, Iowa, from Burlington, Ill., soft coal, 195.  
 Charleston, Ariz., from San Pedro, Cal., mining timbers, 430.  
 Chattanooga from Chicago and Cincinnati, class rates, 440.  
 Chattanooga to Huntsville, Ala., smokestack, 150.  
 Chetek, Wis., from Glidden, Iowa, corn, 241.  
 Chicago, Ill., to Akron, Colo., anthracite coal, 11.  
 Chicago to Black Earth and Mauston, Wis., agricultural implements, 222.  
 Chicago from Blissville, Ark., lumber, 517.  
 Chicago to Chattanooga, class rates, 440.  
 Chicago to Chisholm, Minn., and Marquette, Mich., partitions, refrigerators, and glass, 165.  
 Chicago to Houston, Tex., structural steel, 208.  
 Chicago from Humboldt and Gibson, Tenn., fruits and vegetables, 540.  
 Chicago from Linton, Ind., reconsigned to Burlington, Ill., then to Charles City, Iowa, soft coal, 195.  
 Chicago to Milwaukee, flaxseed screenings and oats, 257.  
 Chicago to Pacific coast terminals, motorcycles, 427.  
 Chicago to St. Joseph, Mo., folding chairs, 255.  
 Chicago from St. Paul, Pullman rates, 135.  
 Chicago to Wabash, Ind., signboard, 185.  
 Chicago Heights, Ill., to Lebanon, Oreg., alum, 591.  
 Chinook, Mont., from San Francisco, Cal., dried fruit, 226.  
 Chisholm, Minn., from Chicago, partitions, refrigerators, and glass, 165.  
 Christopher, Ill., to Ainsworth and Valentine, Nebr., coal, 512.  
 Cincinnati, Ohio, to Beloit, Wis., cotton-duck clothing, 259.  
 Cincinnati to Chattanooga, class rates, 440.  
 Cincinnati, Ohio, from Marietta, Ga., rebilled from Oakhurst, Ga., canned peaches, 210.  
 Cincinnati from Terre Haute, Ind., iron and steel, 601.  
 Clarksville, Tex., from Addington and Ninnekah, Okla., snapped corn, 580.  
 Cleveland, Ohio, to Menominee, Mich., hoop steel, 193.  
 Cleveland to Official Classification territory, blankets, 205.  
 Clinton, Nebr., from Walsenburg Dist., Colo., coal, 572.  
 Coal Creek field, Tenn., to Carolina, Florida, Georgia, and Nashville territory, coal, 405.

## LOCALITIES—Continued.

- Cody, Nebr., from Walsenburg Dist., Colo., coal, 572.  
 Coffeyville, Kans., to Enid, Okla., petroleum, 389.  
 Coffeyville, Kans., to Memphis and Omaha, petroleum, 593.  
 Coffeyville, Kans., to Toledo, Ohio, steam shovel and parts, 265.  
 Collinston, La., to San Francisco, hard-wood lumber, 301.  
 Columbia, Tenn., from New Orleans, sugar, 502.  
 Columbus, Kans., to Memphis, reconsigned to Gulfport, Miss., corn, 228.  
 Communipaw, N. J., demurrage regulations, 25.  
 Council Bluffs, Iowa, to North and South Dakota, cement plaster, 19.  
 Council Bluffs, from southern yellow pine districts, lumber, 532.  
 Covesville, Va., from Pioneer, Ohio, coiled elm hoops, 494.  
 Crawford, Nebr., from Walsenburg Dist., Colo., coal, 572.  
 Cripple Creek, Colo., from Oregon City, Oreg., lumber, 554.  
 Curtis Bay, Md., demurrage regulations, 38.  
 Cushman, Mont., from South Omaha, Nebr., stock cattle, 498.  
 Cuylerville, N. Y., to Detroit, Mich., salt, 259.  
 Dakota Junction, Nebr., from Walsenburg Dist., Colo., coal, 572.  
 Dawson, Iowa, to Trevor, Wis., corn, 92.  
 Dayton, Ohio, from Terre Haute, Ind., iron and steel, 601.  
 Deadwood, S. Dak., from Walsenburg Dist., Colo., coal, 572.  
 Denison, Iowa, from Chanute, Kans., cement, 425.  
 Denver, from Baltimore, bottle caps, 352, 354.  
 Denver, Colo., from California points, harness leather, 220.  
 Denver, from Iron Bridge Junction, Wis., ground iron ore, 596.  
 Denver, Colo., from Omaha, Nebr., agricultural implements, 71.  
 Denver, from St. Louis, cooperage, 337.  
 Des Moines, Iowa, to all middle western points, class rates, 98.  
 Des Moines, Iowa, to Minnesota, North and South Dakota, class rates, 73.  
 Detroit to Atlantic seaboard, flour, 582.  
 Detroit to Buffalo and New York, salt, 268.  
 Detroit, from Cuylerville, N. Y., salt, 259.  
 Detroit to Houston, Miss., salt, 248.  
 Detroit to Memphis, Tenn., salt, 245.  
 Detroit to Oconomowoc, Wis., radiators and hot-water heaters, 183.  
 Detroit to Patricksburg, Ind., salt, 247.  
 Diamondville, Wyo., to Idaho points, coal, 562.  
 Duluth, Minn., from Ridgely, Md., canned tomatoes, 160.  
 Dunbar, Pa., to San Francisco, skylight glass, 202.  
 East Grand Forks, Minn., to Minnewaukan, N. Dak., sawdust, 530.  
 East Moline, Ill., to New Orleans, La., link belting, 500.  
 East St. Louis from New Orleans, cross-ties, 212.  
 Edgewater, N. J., to Struthers, Pa., oil, 548.  
 El Paso, Tex., to and from Albuquerque, N. Mex., class rates, 57.  
 El Paso, Tex., from Gallup, N. Mex., slack coal, 277.  
 El Paso, Tex., from Texas points, oak ties, 129.  
 El Paso, Tex., from West Virginia-Pennsylvania fields, coke, 154.  
 Elizabeth, N. J., demurrage regulations, 25.  
 Elizaville, N. Y., to Birmingham, Ala., apples, 578.  
 Ely, Minn., to St. Charles, Mo., lumber, 485.  
 Enfield, Ill., to Henderson, Ky., corn, 538.  
 Englishtown, N. J., from Frederick Road, Md., agricultural lime, 127.  
 Enid, Okla., from Coffeyville, Kans., petroleum, 389.

## LOCALITIES—Continued.

- Eugene, Oreg., from Toledo, Ohio, farm wagons, 360.  
 Evergreen, Ala., from Pensacola, Fla., fish, 415.  
 Fargo, N. Dak., from St. Paul, Pullman rates, 135.  
 Farmington, Wash., to Kenmare, N. Dak., apples, 550.  
 Fayetteville, N. C., to Cartersville, Ga., cotton-seed hulls, 275.  
 Filer, Idaho, from Diamondville, Kemmerer, and Rock Springs, Wyo., coal, 562.  
 Florida territory from Coal Creek field, Tenn., coal, 405.  
 Fort Smith, Ark., substitution of tonnage, 514.  
 Fort Wayne, Ind., to Beloit, Wis., "triplex cloth," 261.  
 Frederick Road, Md., to Englishtown, N. J., agricultural lime, 127.  
 Fresno, Cal., to Roundup, Mont., dried fruit, 15.  
 Fruitvale, Tex., to Stockton, Cal., elm hoops, 232.  
 Gallup, N. Mex., to El Paso, Tex., slack coal, 277.  
 Garbutt, N. Y., to New York, plaster board, 374.  
 Geneseo, Ill., to Pacific Coast terminals, motorcycles, 427.  
 Georgia territory from Coal Creek field, Tenn., coal, 405.  
 Gibson, Tenn., to Chicago, fruits and vegetables, 540.  
 Gilmore, Ark., to San Francisco, hard-wood lumber, 301.  
 Girard, Kans., to Memphis, reconsigned to Gulfport, Miss., corn, 228.  
 Glidden, Iowa, to Chetek, Wis., corn, 241.  
 Glidden, Wis., to San Francisco, hard-wood lumber, 301.  
 Globe, Ariz., from West Virginia-Pennsylvania fields, coke, 154.  
 Gooding, Idaho, from Diamondville, Kemmerer, and Rock Springs, Wyo., coal, 562.  
 Grand Forks, N. Dak., from St. Paul, Pullman rates, 135.  
 Grand Rapids, Mich., to Newport, Ark., dried beans, 147.  
 Granite Bluff, Mich., to Kiel, Wis., logs, 242.  
 Gray's Landing, Pa., to Los Angeles, coke, 190.  
 Green Bay, Wis., from Paw Paw, Mich., grapes, 249.  
 Greenville, Ala., from Pensacola, Fla., fish, 415.  
 Greer, Iowa, to San Francisco, hard-wood lumber, 301.  
 Groveland Mine, Mich., to Kiel, Wis., logs, 242.  
 Guaymas, Mexico, to Philadelphia, dried pease, 65.  
 Gulfport, Miss., from Kansas and Oklahoma points, via Oklahoma, corn, 228.  
 Gypsum, Iowa, to Lemmon, S. Dak., gypsum, 599.  
 Gypsum, Iowa, to North and South Dakota points, cement plaster, 19.  
 Hailey, Idaho, from Diamondville, Kemmerer, and Rock Springs, Wyo., coal, 562.  
 Hamburg, Germany, to California terminals, package freight, 552.  
 Hammondsport, N. Y., to Pacific Coast terminals, motorcycles, 427.  
 Harlowton, Mont., from San Jose, Cal., canned goods, 13.  
 Hay Springs, Nebr., from Walsenburg Dist., Colo., coal, 572.  
 Henderson, Ky., from Enfield, Ill., corn, 538.  
 Hettinger, S. Dak., from Lemmon, N. Dak., emigrant movables, 382.  
 Horatio, Ark., from Traverse City, Mich., bushel baskets, 175.  
 Houston, Miss., from Detroit, Mich., salt, 248.  
 Houston, Tex., from Breckenridge, Pa., steel plates, 529.  
 Houston, Tex., from Chicago, structural steel, 208.  
 Houston to and from New Orleans, rice, 490.  
 Humboldt, Tenn., to Chicago, fruits and vegetables, 540.  
 Humboldt, Tenn., to St. Louis, Mo., strawberries, 372.  
 Huntsville, Ala., from Chattanooga, Tenn., smokestack, 150.  
 Indiana to Janesville, Wis., buckwheat, 439.  
 Iron Mountain, Mich., to Kiel, Wis., logs, 242.  
 Iron Junction, Wis., to Denver and Spokane, ground iron ore, 596.

## LOCALITIES—Continued.

- Irwin, Nebr., from Walsenburg District, Colo., coal, 572.  
 Janesville, Wis., from Indiana, Michigan, and Pennsylvania, buckwheat, 439.  
 Jermyn, Pa., to New York State points, coal, 508.  
 Johnstown, Nebr., from Walsenburg District, Colo., coal, 572.  
 Johnstown, Pa., to Winona, Minn., bar steel, 334.  
 Kansas points from Little Rock and Woodson, Ark., cypress lumber, 396.  
 Kemmerer, Wyo., to Idaho points, coal, 562.  
 Kenmare, N. Dak., from Washington points, apples, 550.  
 Kentucky to Windsor, Ontario, hard-wood lumber, 162.  
 Kiel, Wis., from Granite Bluff, Iron Mountain, and Groveland Mine, logs, 242.  
 La Crosse, Wis., from South Haven, Mich., grapes, 279.  
 Laramie, Wyo., from Ash Grove, Mo., lime, 545.  
 Lead, S. Dak., from Walsenburg Dist., Colo., coal, 572.  
 Leadwood, Mo., from Cement, Okla., cement plaster, 376.  
 Lebanon, Oreg., from Chicago Heights, Ill., alum, 591.  
 Leckrone, Pa., to Los Angeles, Cal., coke, 190.  
 Lemmon, S. Dak., from Armour, S. Dak., emigrant movables, 382.  
 Lemmon, S. Dak., from Gypsum, Iowa, stucco, 599.  
 Lettsworth, La., from Ninnekah, Okla., corn, 412.  
 Lexington, Ky., from Marietta, Ga., rebilled from Oakhurst, Ga., canned peaches, 210.  
 Likely, Cal., from California points, hardware, 109.  
 Lime City, Tex., from Tallulah, La., coiled elm hoops, 224.  
 Linton, Ind., to Burlington, Ill., reconsigned to Charles City, Iowa, soft coal, 195.  
 Little Rock, Ark., to Kansas, Missouri, and Oklahoma, cypress lumber, 396.  
 Little Rock, Ark., to Memphis, Tenn., cotton-seed meal and hulls, 67.  
 Little Rock to Memphis, cypress lumber, 391.  
 Lockland, Ohio, from Augusta, Ga., burnt cotton, 478.  
 Lockwood, Mo., to Memphis, reconsigned to Gulfport, Miss., corn, 228.  
 Locust Point, Md., demurrage regulations, 38.  
 Lorain, Ohio, to Oconomowoc, Wis., gasoline stoves, 183.  
 Los Angeles, delivery charge, 310.  
 Los Angeles from Grays Landing and Leckrone, Pa., coke, 190.  
 Los Angeles from Sartells, Minn., print paper, 388.  
 Louisville, Ky., to various points in Official Classification territory, premiums, 566.  
 Louisville to Sacramento, Cal., farm wagons, 360.  
 Louisville from Terre Haute, Ind., iron and steel, 601.  
 Louisville from Vincennes, Ind., bar iron, 604.  
 Lynchburg, Va., from West Virginia points, salt, 51.  
 McCune, Kans., to Memphis, reconsigned to Gulfport, Miss., corn, 228.  
 Manchester, Vt., to Waterloo, Wis., butter boxes, 172.  
 Marie, Ark., to San Francisco, hard-wood lumber, 301.  
 Marietta, Ga., from Oakhurst, Ga., rebilled to Lexington, Ky., and Cincinnati, Ohio, canned peaches, 210.  
 Marked Tree, Ark., to San Francisco, hard-wood lumber, 301.  
 Marquette, Mich., from Chicago, partitions, refrigerators, and glass, 165.  
 Marshfield, Wis., from Amherst, Wis., bran, 355.  
 Marvell, Ark., to San Francisco, hard-wood lumber, 301.  
 Mauston, Wis., from Chicago, agricultural implements, 222.  
 Memphis, Tenn., to Arkansas, fertilizer, 1, 3, 5.  
 Memphis from Coffeyville, Kans., petroleum, 593.  
 Memphis, Tenn., from Detroit, Mich., salt, 245.  
 Memphis to Horatio, Ark., bushel baskets, 175.



## LOCALITIES—Continued.

- Memphis from Kansas and Oklahoma, reconsigned to Gulfport, Miss., corn, 228.  
Memphis, Tenn., from Little Rock and Pine Bluff, Ark., cotton-seed meal and hulls, 67.  
Memphis from Little Rock and Woodson, Ark., cypress lumber, 391.  
Memphis to New Orleans, hard-wood lumber, 83.  
Memphis from New Orleans, cross ties, 212.  
Memphis to Pueblo, Colo., uncompressed cotton linters, 403.  
Memphis to San Francisco, hard-wood lumber, 301.  
Memphis to Woodward, Okla., egg-case material, 48.  
Menominee, Mich., from Cleveland, Ohio, hoop steel, 193.  
Merriman, Nebr., from Walsenburg Dist., Colo., coal, 572.  
Mexico to Philadelphia, dried pease, 65.  
Miami, I. T., to Memphis, reconsigned to Gulfport, Miss., corn, 228.  
Michigan to Janesville, Wis., buckwheat, 439.  
Michigan City, Ind., to Beloit, Wis., cotton overalls and jackets, 261.  
Milwaukee from Chicago, flaxseed screenings and oats, 257.  
Milwaukee, Wis., to Pacific Coast terminals, motorcycles, 427.  
Milwaukee to Waterloo, Wis., butter boxes, 172.  
Minneapolis, Minn., to Amherst, Wis., bran, 355.  
Minneapolis, Minn., from Montgomery, Ala., cotton linters, 180.  
Minneapolis, Minn., to New York, flour, 113.  
Minneapolis to Pacific Coast terminals, motorcycles, 427.  
Minnewaukan, N. Dak., from East Grand Forks, Minn., sawdust, 530.  
Mississippi River to Nowata, Okla., iron roofing, 125.  
Missouri points from Little Rock and Woodson, Ark., cypress lumber, 396.  
Montalvo, Cal., to Omaha, lima beans, 53.  
Montgomery, Ala., to Minneapolis, Minn., cotton linters, 180.  
Montgomery, Ala., from Pensacola, Fla., fish, 415.  
Montrose, Iowa, to Rochester, Minn., grapes, 357.  
Mount Ross, N. Y., to Birmingham, Ala., apples, 578.  
Mountain Home, Idaho, from Diamondville, Kemmerer and Rock Springs, Wyo., coal, 562.  
Nampa, Idaho, from Diamondville, Kemmerer, and Rock Springs, Wyo., coal, 562.  
Naples, Tex., to San Francisco, hard-wood lumber, 301.  
Nashville, Tenn., from Carthage, Ohio, roofing paper and materials, 385.  
Nashville, Tenn., from Coal Creek field, Tenn., coal, 405.  
Nebraska points from Norfolk, Nebr., when from beyond, cement plaster, 105.  
Nebraska points, through Missouri River points to eastern destinations grain, 364.  
Nebraska points from Walsenburg Dist., Colo., coal, 572.  
Nenzil, Nebr., from Walsenburg Dist., Colo., coal, 572.  
New Albany, Miss., from Carbon Hill Dist., Ala., coal, 88.  
New Orleans to Columbia, Tenn., sugar, 502.  
New Orleans from East Moline, Ill., link belting, 500.  
New Orleans to East St. Louis and Memphis cross-ties, 212.  
New Orleans to and from Houston, Tex., rice, 490.  
New Orleans from Memphis, Tenn., hard-wood lumber, 83.  
New York from Detroit, salt, 268.  
New York from Garbutt, N. Y., plaster board, 374.  
New York State from Jermyn, Pa., coal, 508.  
New York from Minneapolis, Minn., flour, 113.  
New York to Reidsville, N. C., raw sugar, 197.  
New York Harbor points, demurrage regulations, 25.  
Newport, Ark., from Grand Rapids, Mich., dried beans, 147.

## LOCALITIES—Continued.

- Ninnekah, Okla., to Clarksville, Tex., snapped corn, 580.  
 Ninnekah, Okla., to Lettsworth, La., corn, 412.  
 Norfolk, Nebr., to Nebraska and South Dakota points, when from beyond, cement plaster, 105.  
 North, S. C., to Wilmington, N. C., cotton, 251.  
 North Dakota points from Gypsum and Council Bluffs, Iowa, cement plaster, 19.  
 North Easton, Mass., from Webster, S. Dak., foodstuffs, 132.  
 Nowata, Okla., from Mississippi River, iron roofing, 125.  
 Oakhurst, Ga., to Marietta, Ga., rebilled to Lexington, Ky., and Cincinnati, Ohio, canned peaches, 210.  
 Oakland, Cal., from Sartells, Minn., print paper, 388.  
 Oconomowoc, Wis., from Lorain, Ohio, and Detroit, Mich., stoves, heaters, and parts, 183.  
 Official Classification territory, horse blankets, 205.  
 Official Classification territory, premiums in coffee, 566.  
 Oklahoma points from Little Rock and Woodson, Ark., cypress lumber, 396.  
 Oklahoma City, Okla., concentration and compression of cotton, 340.  
 Olar, S. C., to Wilmington, N. C., cotton, 251.  
 Omaha from California points, lima beans, 53.  
 Omaha from Coffeyville, Kans., petroleum, 593.  
 Omaha to Denver, Colo., agricultural implements, 71.  
 Omaha from southern yellow pine districts, lumber, 532.  
 Oregon City, Ore., to Cripple Creek, Colo., lumber, 554.  
 Ottumwa, Ia., to Tioga, Colo., box-car loader, 414.  
 Pacific Coast terminals from east of Mississippi River, motorcycles, 427.  
 Paraffin, Cal., to Alturas, Cal., roofing paper and roof coating, 109.  
 Patricksburg, Ind., from Detroit, Mich., salt, 247.  
 Paw Paw, Mich., to Green Bay, Wis., grapes, 249.  
 Pennsylvania to Janesville, Wis., buckwheat, 439.  
 Pensacola, Fla., to Alabama points, fish, 415.  
 Peoria, Ill., to Ainsworth and Valentine, Nebr., coal, 512.  
 Philadelphia from Guaymas, Mex., dried pease, 65.  
 Pine Bluffs, Wyo., from Ash Grove, Mo., lime, 545.  
 Pine Bluff, Ark., to Memphis, Tenn., cotton-seed meal and hulls, 67.  
 Pioneer, O., to Coveseville, Va., coiled elm hoops, 494.  
 "Pomeroy Bend," W. Va., to Lynchburg and Roanoke, Va., salt, 51.  
 Pomona, Tenn., to St. Louis, Mo., strawberries, 372.  
 Pool, Ark., to San Francisco, hard-wood lumber, 301.  
 Port Johnson, N. J., demurrage regulations, 25.  
 Port Liberty, N. J., demurrage regulations, 25.  
 Portland, Ore., from Toledo, O., farm wagons, 360.  
 Prairie Switch, Ind., from Baltimore, Buffalo, Tennessee, and Washington Court House, Ohio, acid phosphate, 522.  
 Prescott, Ariz., from Racine, Wis., axles and vehicle wheels, 142.  
 Provencal, La., to Santa Rita, N. M., lumber, 560.  
 Pueblo, Colo., from Memphis, uncompressed cotton linters, 403.  
 Pueblo, Colo., from St. Louis, Mo., compressed cotton, 401.  
 Pullman, Wash., to Kenmare, N. Dak., apples, 550.  
 Pullman, Wash., from St. Joseph, Mo., sirup, 370.  
 Pullman, Wash., to Valley City, N. Dak., apples, 550.  
 Quapaw, I. T., to Memphis, reconsigned to Gulfport, Miss., corn, 228.  
 Quigley, Ark., to San Francisco, hard-wood lumber, 301.  
 Racine, Wis., to Prescott, Ariz., axles and vehicle wheels, 142.

## LOCALITIES—Continued.

- Rapid City, S. Dak., from Walsenburg Dist., Colo., coal, 572.  
 Reading, Pa., to Pacific Coast terminals, motorcycles, 427.  
 Red Wing, Minn., from Trunk Line points, class rates, 481.  
 Reidsville, N. C., from New York, raw sugar, 197.  
 Richmond, Ind., to Billings, Okla., reconsigned to Wichita, Kans., woven-wire fencing, 378.  
 Ridgely, Md., to Duluth, Minn., canned tomatoes, 160.  
 Roanoke, Va., from West Virginia points, salt, 51.  
 Rochester, Minn., from Montrose, Ia., grapes, 357.  
 Rock Springs, Wyo., to Idaho points, coal, 562.  
 Roundup, Mont., from Fresno, Cal., dried fruit, 15.  
 Roundup, Mont., from San José, Cal., canned goods, 13.  
 Rupert, Idaho, from Diamondville, Kemmerer, and Rock Springs, Wyo., coal, 562.  
 Rushville, Nebr., from Walsenburg Dist., Colo., coal, 572.  
 St. Charles from Ely, Minn., lumber, 485.  
 St. Joseph, Mo., from Chicago, folding chairs, 255.  
 St. Joseph, Mo., to Pullman, Wash., sirup, 370.  
 St. Louis, Mo., to Canton, Ill., scrap iron, 299.  
 St. Louis to Denver, cooperage, 337.  
 St. Louis, Mo., from Humboldt and Pomona, Tenn., strawberries, 372.  
 St. Louis, Mo., to Pueblo, Colo., compressed cotton, 401.  
 St. Louis, Mo., from Wabash, Ind., wood-pulp board, 91.  
 St. Paul to Chicago, Superior, Wis., Seattle, Fargo, N. Dak., and Grand Forks, N. Dak., Pullman rates, 135.  
 Sacramento, Cal., from Louisville, Ky., farm wagons, 360.  
 Salem, S. C., to Washington, D. C., lumber, 96.  
 San Francisco, loading and unloading carload freight, 234.  
 San Francisco, terminal charge, 333.  
 San Francisco to Alturas, Cal., nails, wire, and products, 109.  
 San Francisco to Alturas, Cal., sirup and sugar, 109.  
 San Francisco from Arkansas, Louisiana, and other points, lumber, 301.  
 San Francisco from east of Mississippi River, motorcycles, 427.  
 San Francisco to Chinook, Mont., dried fruit, 226.  
 San Francisco to Denver, Colo., harness leather, 220.  
 San Francisco from Dunbar, Washington, and Allegheny, Pa., skylight glass, 312.  
 San Francisco from points east of Mississippi River, lumber, 308.  
 San Francisco from Sartells, Minn., print paper, 388.  
 San José, Cal., to Roundup, Mont., canned goods, 13.  
 San Pedro, Cal., to Charleston, Ariz., mining timbers, 430.  
 Santa Rita, N. Mex., from Provencal, La., lumber, 560.  
 Sartells, Minn., to Los Angeles, Oakland, and San Francisco, print paper, 388.  
 Saticoy, Cal., to Omaha, lima beans, 53.  
 Savannah, Ga., from Wagon Works station, Toledo, Ohio, wagons, 144.  
 Scranton, N. Dak., from Aberdeen, S. Dak., originating at Washington points, lumber, 495.  
 Seattle, Wash., from Antwerp, Belgium, champagne, 527.  
 Seattle, Wash., from St. Paul, Pullman rates, 135.  
 Seattle, Wash., from Toledo, Ohio, farm wagons, 360.  
 Selma, Ala., from Pensacola, Fla., fish, 415.  
 Shultz, Ark., to Chicago, lumber, 517.  
 Shultz, Ark., to San Francisco, hard-wood lumber, 301.  
 Somis, Cal., to Omaha, lima beans, 53.  
 South Dakota points from Gypsum and Council Bluffs, Iowa, cement plaster, 19

## LOCALITIES—Continued.

- South Dakota points from Norfolk, Nebr., when from beyond, cement plaster, 105.  
 South Dakota points from Walsenburg Dist., Colo., coal, 572.  
 South Haven, Mich., to La Crosse, Wis., grapes, 279.  
 South Omaha, Nebr., to Cushman, Mont., stock cattle, 498.  
 Southport, La., to East St. Louis, and Memphis, cross-ties, 212.  
 Spokane from Iron Ridge Junction, Wis., ground iron ore, 596.  
 Springfield, Mass., to Pacific Coast terminals, motorcycles, 427.  
 Stanards, N. Y., to Struthers, Pa., petroleum oil, 380.  
 Stockton, Cal., to Alturas, Cal., pipe, nails, and wire, 109.  
 Stockton, Cal., from Will's Point, Tex., elm hub blocks, 232.  
 Struthers, Pa., from Edgewater, N. J., oil, 548.  
 Struthers, Pa., from Standards, N. Y., petroleum oil, 380.  
 Stuart, Nebr., from Walsenburg Dist., Colo., coal, 572.  
 Superior, Wis., from St. Paul, Pullman rates, 135.  
 Tallulah, La., to Lime City, Tex., coiled elm hoops, 224.  
 Tennessee phosphate fields to Prairie Switch, Ind., acid phosphate, 522.  
 Terre Haute, Ind., to Louisville, Cincinnati, and Dayton, iron and steel, 601.  
 Texas points to El Paso, Tex., oak ties, destined beyond, 129.  
 Thistle Junction, Utah, demurrage, 7.  
 Tioga, Colo., from Ottumwa, Iowa, box-car loader, 414.  
 Toledo, Ohio, from Coffeyville, Kans., steam shovel and parts, 265.  
 Toledo, Ohio, to Portland and Eugene, Oreg., and Seattle, Wash., farm wagons, 360.  
 Toledo, Ohio, to Watertown and Cedarburg, Wis., Tonopah, Nev., and Savannah, Ga., wagons, 144.  
 Tombstone, Ariz., from Brighton, Ohio, iron fences, 94.  
 Tonopah, Nev., from Wagon Works station, Toledo, Ohio, wagons, 144.  
 Traverse City, Mich., to Horatio, Ark., bushel baskets, 175.  
 Trevor, Wis., from Dawson, Iowa, corn, 92.  
 Trunk Line points to Red Wing, Minn., class rates, 481.  
 Twin Falls, Idaho, from Diamondville, Kemmerer, and Rock Springs, Wyo., coal, 562.  
 Utica, N. Y., switching charge on coal, 168.  
 Utica, N. Y., loading and unloading carload freight, 271.  
 Valley City, N. Dak., from Pullman, Wash., apples, 550.  
 Valentine, Nebr., from Christopher, Ill., coal, 512.  
 Vincennes, Ind., to Louisville, Ky., bar iron, 604.  
 Wabash, Ind., from Chicago, signboard, 185.  
 Wabash, Ind., to St. Louis, wood-pulp board, 91.  
 Waco, Tex., from Cairo, Ill., passenger fare, 187.  
 Wagon Works station, Toledo, Ohio, to Watertown and Cedarburg, Wis., Tonopah, Nev., and Savannah, Ga., wagons, 144.  
 Walsenburg District, Colo., to various Nebraska points, coal, 572.  
 Washington points to Aberdeen, S. Dak., reconsigned to Scranton, N. Dak., lumber, 495.  
 Washington, D. C., from Salem, S. C., lumber, 96.  
 Washington, La., to San Francisco, hard-wood lumber, 301.  
 Washington, Pa., to San Francisco, skylight glass, 202.  
 Washington Court House, Ohio, to Prairie Switch, Ind., acid phosphate, 522.  
 Waterloo, Wis., from Milwaukee, butter boxes, 172.  
 Watertown, Wis., from Wagon Works station, Toledo, Ohio, wagons, 144.  
 Webster, S. Dak., to North Easton, Mass., foodstuffs, 132.  
 Weiser, Idaho, from Diamondville, Kemmerer, and Rock Springs, Wyo., coal, 562.  
 West Carrollton, Ohio, demurrage charges, 178.

## LOCALITIES—Continued.

- West Pittsburg, Pa., to Cleveland, reconsigned to Menominee, Mich., hoop steel, 193.  
 West Virginia points to Lynchburg and Roanoke, Va., salt, 51.  
 West Virginia to Windsor, Ont., hardwood lumber, 162.  
 West Virginia-Pennsylvania fields to El Paso, Tex., and Globe, Ariz., coke, 154.  
 Wheeling, W. Va., to Beloit, Wis., cotton drills, 261.  
 Whitewood, S. Dak., from Walsenburg District, Colo., coal, 572.  
 Whitney, Nebr., from Walsenburg District, Colo., coal, 572.  
 Wichita, Kans., from Billings, Okla., woven-wire fencing, 378.  
 Will's Point, Tex., to Stockton, Cal., elm-hub blocks, 232.  
 Wilmington, N. C., from North and Olar, S. C., cotton, 251.  
 Windsor, Ont., from West Virginia and Kentucky, hard-wood lumber, 162.  
 Winona, Minn., from Johnstown, Pa., bar steel, 334.  
 Winston, La., to San Francisco, hard-wood lumber, 301.  
 Wood Lake, Nebr., from Walsenburg District, Colo., coal, 572.  
 Woodson, Ark., to Memphis, cypress lumber and yellow pine, 391.  
 Woodson, Ark., to Kansas, Missouri, and Oklahoma, cypress lumber, 396.  
 Woodward, Okla., from Memphis, Tenn., egg-case material, 48. •  
 Wynne, Ark., to Horatio, Ark., bushel baskets, 175.  
 Zumwalt, Wash., to Kenmare, N. Dak., apples, 550.

## LOCATION.

- If Sugar Creek given advantage over Coffeyville to Omaha, then Coffeyville entitled to like advantage to the south to Memphis. National Petroleum Asso. v. M. P. Ry. Co. 593 (595).  
 Proximity of Red Wing to competing points in same region make higher rates thereto unlawful. Frederick & Kempe Co. v. N. Y. N. H. & H. R. R. Co. 481 (484).  
 Blanket adjustment that ignores geographical location of production can not be maintained. Ferguson Saw Mill Co. v. St. L. I. M. & S. Ry. Co. 396 (399).

## LONG AND SHORT HAUL.

- Same rate for short as for long haul goes to question of reasonableness of rate, not violation of 4th section. Idaho Commercial Clubs v. O. S. L. R. R. Co. 562 (565).  
 Existence of competition at farther distant point does not excuse unreasonableness *per se* of higher rate. Southern Timber & Land Co. v. S. P. Co. 232.  
 Violation not sustained where natural route would not be through shorter-distance point. Colorado Bedding Co. v. C. B. & Q. R. R. Co. 401.  
 Prima facie case of dissimilarity made by showing of water competition. Bayou City Rice Mills v. T. & N. N. O. R. R. Co. 490.  
 Basing point system approved as to sugar from New Orleans to Columbia, Tenn. Columbia Grocery Co. v. L. & N. R. R. Co. 502.

## LONG HAUL.

- Commodity rate to one point over one line no basis of comparison with higher class rate to longer-distant point over two lines. Wells-Higman Co. v. St. L. I. M. & S. Ry. 175 (176).  
 One-line haul rate no measure of reasonableness, standing alone, of higher rate over route taken consisting of two lines. Snyder-Malone-Donahue Co. v. C. B. & Q. R. R. Co. 498.  
 Lower rates over one line to meet competition. Noble v. V. S. & P. Ry. Co. 224 (225).

## LOW RATES.

- Within proper limitations carrier may make low rates to induce movement which would not otherwise occur. Consumers' Ice Co. v. A. T. & S. F. Ry. Co. 277 (278).  
 Coal is low-grade commodity and ordinarily moves at much lower rates than average commodity. Idaho Commercial Clubs v. O. S. L. R. R. Co. 562 (564).  
 Ton per mile on coal equal to that on all freight too high for such a low-grade commodity. Rainey & Rogers v. St. L. & S. F. R. R. Co. 88 (90).

**LOW RATES—Continued.**

Fertilizer should ordinarily move in carloads at low rates. *Virginia-Carolina Chemical Co. v. St. L. I. M. & S. Ry. Co.* 1.

Low state rates may not be equalized by high interstate rates. *Commercial Club of Omaha v. A. & S. R. Ry. Co.* 532 (536).

Lumber rates should be low. *Ferguson Saw Mill Co. v. St. L. I. M. & S. Ry. Co.* 391 (394).

Cement plaster entitled to low rate. *Acme Cement Plaster Co. v. C. G. W. Ry. Co.* 49 (20).

**MAIL.**

Express company in competing with does not violate the Act. *Williams v. Wells, Fargo & Co.* 17.

**MAIN LINE.**

It is fair that main line should in a degree contribute to support of branch line, for branch-line business when reaching main line is surplus traffic from which larger profit is made. *Receivers & Shippers Assn. of Cincinnati v. C. N. O. & T. P. Ry. Co.* 440 (465).

**MAINTENANCE OF RATE.**

Rate voluntarily established; higher rate charged found unreasonable and lower rate ordered to be maintained two years from date of order. *Willamette Pulp & Paper Co. v. N. P. Ry. Co.* 388 (389).

Reparation awarded on basis of reduced rate after unjust advance, but lower rate not ordered to be maintained. *Alexander Sprunt & Son v. S. A. L. Ry.* 251.

Reparation awarded on basis higher than rate at present in effect; no order for future. *Wheeling Corrugating Co. v. B. & O. R. R. Co.* 125.

Rate complained of reduced; reparation awarded for other reasons; no order for future. *Windsor Turned Goods Co. v. C. & O. Ry. Co.* 162 (164).

None ordered when general adjustment under advisement in another case. *Milburn Wagon Co. v. L. S. & M. S. Ry. Co.* 144 (146).

Reparation awarded, but rate not ordered to be maintained. *Ocheltree Grain Co. v. T. & P. Ry. Co.* 412 (413).

**MARKET COMPETITION.**

Competition at Portland, Oreg., of Wyoming coal with Australian coal, requiring same rates to that point as to intermediate Wyoming points. *Idaho Commercial Clubs v. O. S. L. R. R. Co.* 562 (564).

Neither the east nor the west has any vested right to sell a certain amount in southern territory. *Receivers & Shippers Assn. of Cincinnati v. C. N. O. & T. P. Ry. Co.* 440.

Rates should be so adjusted as to permit widest possible competition. *Andy's Ridge Coal Co. v. So. Ry. Co.* 405 (410).

**MARKING PACKAGES.**

Rule that improperly marked packages should be rated higher found unreasonable. *Racine-Sattley Co. v. C. M. & St. P. Ry. Co.* 142.

**MEXICO.**

Two cars furnished instead of one for shipment of dried pease from Guaymas, Mexico, to Philadelphia. *Maldonado & Co. v. Ferrocarril de Sonora.* 65.

**MILEAGE BOOKS.**

Carriers issue voluntarily, and therefore may attach reasonable and nondiscriminatory regulations. *Eschner v. P. R. R. Co.* 60.

**MILLING-IN-TRANSIT.**

Grain, Detroit, asked but not granted. *Stott v. M. C. R. R. Co.* 582 (590).

**MINIMUM.**

Through rate of \$1.59, minimum 30,000, exceeded combination of \$1.15, with minimums of 24,000 and 30,000; reparation awarded on basis of lower combination and minimums, though through rate subsequently reduced to \$1.10 with 30,000 minimum, which is ordered to maintain. *Ryan v. G. N. Ry. Co.* 226.

**ORDER.**

Shipment moving, by mistake, one day before reduced rates effective in pursuance of order of Commission in another case. Reparation awarded. *Winters Metallic Paint Co. v. C. M. & St. P. Ry. Co.* 596.

Rescinded where predicated upon inaccurate allegations and admissions. *Marshall & Michel Grain Co. v. St. L. & S. F. R. R. Co.* 228.

**ORIGIN.**

Proportional rate limited in application to traffic from defined territory not of itself unlawful *per se*. *Serry v. S. P. Co.* 554 (556).

Proportional rates should not be limited to traffic originating at particular places. *Bayou City Rice Mills v. T. & N. O. R. R. Co.* 490 (493).

A common carrier can not impose an unreasonable rate because of the origin of the traffic. *Acme Cement Plaster Co. v. C. G. W. Ry. Co.* 19.

Proportional rate ordered, lower than local, on traffic from beyond Enfield. *Henderson Elevator Co. v. L. & N. R. R. Co.* 538.

Proportional rate applicable on traffic from beyond. *Central Lumber Co. v. C. M. & St. P. Ry. Co.* 495.

**OVERCHARGE.**

All carriers participating in should share in refund. *Platten Produce Co. v. K. L. S. & C. Ry. Co.* 249.

Carriers should pay without order. *Royal Metal Manufacturing Co. v. C. G. W. R. R. Co.* 255.

**PACKING.**

Condition of cotton exported worse than from any other country. *Anderson, Clayton & Co. v. C. R. I. & P. Ry. Co.* 340 (351).

**PAPER RATE.**

No discrimination can be predicated upon favorable rate to point at which commodity involved not consumed. *Consumers' Ice Co. v. A. T. & S. F. Ry. Co.* 277.

**PARTY.**

Road, not party, against whom order could not be made on account of limitation statute, not fatal defect. *Ocheltree Grain Co. v. T. & P. Ry. Co.* 412 (413).

Complaint brought by commercial club, reparation awarded to particular shippers entitled. *Commercial Club of Omaha v. S. P. Co.* 53 (56).

Supplemental petition necessary to consider rates on lines not parties. *Ferguson Saw Mill Co. v. St. L. I. M. & S. Ry. Co.* 396.

Lines not parties on which transit privilege is asked. *Bayou City Rice Mills v. T. & N. O. R. R. Co.* 490.

**PASSENGER FARE.**

Lower rate northbound, Waco, Tex., to Cairo, Ill., no ground for reparation because higher rate southbound. *Littell v. St. L. S. W. Ry. Co.* 187.

**PAST RATE.**

Class rate held unreasonable in view of lower distance rate formerly in effect and lower commodity rate established after movement. *Okerson v. P. R. R. Co.* 127.

Former relationship between snapped and shell corn rate changed then resumed. Reparation awarded. *Texas Grain & Elevator Co. v. C. R. I. & P. Ry. Co.* 580.

Rates long in effect as result of experiment ought not to be disturbed unless Commission certain justice requires it. *Andy's Ridge Coal Co. v. So. Ry. Co.* 405 (410).

Rate long in effect, advanced, and reduced to meet competitive conditions; no reparation awarded. *Kentucky Wagon Manufacturing Co. v. I. C. R. R. Co.* 360.

No matter how valuable a privilege may have been in the past, custom not determinable of its legality. *Peale, Peacock & Kerr v. C. R. R. Co. of N. J.* 25 (34).

**PAST RATE—Continued.**

Rate, though in its inception an error, maintained for two years, indicative of reasonableness. *Clark Co. v. B. & S. Ry. Co.* 380.

No weighty presumption of reasonableness to long-continued rates or practices.

*Schultz-Hansen Co. v. S. P. Co.* 234 (239).

Long-continued rate advanced and then reduced, higher rate found unreasonable.

*Commercial Club of Omaha v. S. P. Co.* 53.

Rate long in effect, advanced, then voluntarily reduced. Advance held unlawful.

*Serry v. S. P. Co.* 554.

**"PATCHING."**

Charge imposed by compress company not found to justify order against carriers.

*Anderson, Clayton & Co. v. C. R. I. & P. Ry. Co.* 340.

**PERCENTAGE RATES.**

Departure from established ratings as between Chicago and Detroit found unwarranted. *Delray Salt Co. v. P. R. R. Co.* 259.

**PERSONALITY OF CONSIGNEE.**

Publication of tariff for any one shipper which does not apply to all is clearly a violation of law. *American Creosote Works v. I. C. R. R. Co.* 212 (215).

**PLANT FACILITY.**

Tap line service a plant facility. *Fathauer Co. v. St. L. I. M. & S. Ry. Co.* 517 (520).

**PLEADING.**

Rules of Commission intended to relieve from observance of technical rules of pleading. *Memphis Freight Bureau v. St. L. S. W. Ry. Co.* 67.

**PORT DISCRIMINATION.**

Carrier not guilty of where rates made unusually low by state commission on state traffic. *Saunders & Co. v. Southern Express Co.* 415.

**POSTING TARIFFS.**

In absence of joint rate from local station on one line to point on another line, it is not incumbent on initial line to post at point of origin tariffs showing combination of locals. *Canadian Valley Grain Co. v. C. R. I. & P. Ry. Co.* 509.

Condition to application of rate, which could have been complied with, filed with Commission but not posted. Undercharge collected ordered refunded. *Kiel Woodenware Co. v. C. M. & St. P. Ry. Co.* 242.

**POTENTIAL COMPETITION.**

Through Tehuantepec Route justifies low rates to Pacific coast. *Kentucky Wagon Manufacturing Co. v. I. C. R. R. Co.* 360 (362).

**POWER OF COMMISSION.**

Under Hepburn Act of 1906 Commission was invested with jurisdiction to establish a rate for the future. *Receivers & Shippers Association of Cincinnati v. C. N. O. & T. P. Ry. Co.* 440 (443).

No power to enjoin carrier from collecting lawful tariff charges for services rendered.

*Peale, Peacock & Kerr v. C. R. R. Co. of N. J.* 25.

None to lay embargoes; power limited to removal of discrimination. *Peale, Peacock & Kerr v. C. R. R. Co. of N. J.* 25 (34).

None to require special fares less than normal passenger-mile revenue. *Eschner v. P. R. R. Co.* 60.

Commission may prescribe rates for the future. *Williams v. Wells, Fargo & Co.* 17 (18).

No authority to initiate rates. *Williams v. Wells, Fargo & Co.* 17 (18).

**PRACTICE.**

Commission has full power to remove unjust discrimination resulting from a rule or practice as well as that resulting from a rate. *Overbacker Coffee Co. v. Southern Ry. Co.* 566 (570).



**PRECEDENT.**

When given situation has been passed upon, decision ought to be of very great weight. *Receivers & Shippers Association of Cincinnati v. C. N. O. & T. P. Ry.* Co. 440 (445).

On *Kindelon v. Southern Pacific Co.*, 17 I. C. C. 251, reparation awarded. *Maris v. S. P. Co.* 301.

**PREFERENCE.**

To permit different rating on premiums when inclosed in packages would result in undue preference in violation of Act. *Ouerbacker Coffee Co. v. Southern Ry.* Co. 566.

Carrier can not be charged with preference or advantage to points which it does not serve. *Friend Paper Co. v. C. C. C. & St. L. Ry. Co.* 178 (179).

**PREJUDICE.**

If full quota of cars received, fact that they were not defendant's own cars subjected complainant to no undue prejudice. *Peale, Peacock & Kerr v. Cent. R. R. Co. of New Jersey*, 25 (34).

Prejudicial to fail to give Locust Point and Curtis Bay same free time as allowed at Philadelphia. *Lynah & Read v. B. & O. R. R. Co.* 38 (47).

Alleged because of withdrawal of assistance in unloading carload freight. *Utica Traffic Bureau v. N. Y. C. & H. R. R. R. Co.* 271.

Application of arbitraries unduly prejudicial and therefore unlawful. *Frederich & Kempe Co. v. N. Y. N. H. & H. R. R. Co.* 481 (484).

Alleged to result from failure to furnish transit privilege. *Bayou City Rice Mills v. T. & N. O. R. R. Co.* 490.

**PREMIUM.**

Discriminatory to grant to other shippers privilege of including advertising matter and articles in packages of merchandise and to refuse same or similar privilege to complainant. *Ouerbacker Coffee Co. v. So. Ry. Co.* 566.

**PREPAYMENT.**

No demurrage, without tariff, on shipment held in transit because consigned to prepay station on connecting line on which charges were not prepaid. *Tioga Coal Co. v. C. R. I. & P. Ry. Co.* 414.

**PRIVILEGES.**

No matter how valuable a privilege to shipper, its reasonableness, justness, and legality for future is determined not alone by custom which has prevailed, but by provisions of Act and facts before us. *Peale, Peacock & Kerr v. Cent. R. R. Co. of New Jersey*, 25 (34).

Identity of lake grain being preserved, defendant ought perhaps to be required to accord at Detroit same milling-in-transit privilege which we required of carriers at New York. *Stott v. M. C. R. R. Co.* 582 (590).

Right to use exchange order and mileage books is in nature of privilege and must be accepted with all lawful limitations that may be attached. *Eschner v. P. R. R. Co.* 60 (64).

Protection of through rate depends entirely upon shipper delivering cotton for reshipment within time named. *Henderson & Barkdull v. St. L. I. M. & S. Ry. Co.* 514 (516).

Should appear in tariff. *Schultz-Hansen Co. v. S. P. Co.* 234 (237), *Anderson, Clayton & Co. v. C. R. I. & P. Ry. Co.* 340 (349).

Complainant not entitled to transit privilege. *Bash Fertilizer Co. v. Wabash R. R. Co.* 522.

**PROCEDURE.**

Amended petition filed during argument asking for reparation, which was allowed. *Virginia-Carolina Chemical Co. v. St. L. I. M. & S. Ry. Co.* 1 (2); *Same v. C. R. I. & P. Ry. Co.* 3 (4); *Same v. St. L. & S. F. R. R. Co.* 5 (6).

**PROOF.**

No sufficient proof of unreasonableness of rates complained of. *Greater Des Moines Committee v. C. G. W. Ry. Co.* 98.

Complaint not sufficiently proved, dismissed. *Greater Des Moines Committee v. C. M. & St. P. Ry. Co.* 73.

**PROPORTIONAL RATE.**

Held discriminatory in not establishing proportional rate, lower than local from Enfield, Ill., to Henderson, Ky., on corn from beyond Enfield destined beyond Henderson. *Henderson Elevator Co. v. L. & N. R. R. Co.* 538.

Rail carriers should not carry lower rates to railway point in connection with transportation company not subject to Act than to same point for delivery there. *Lauer & Son v. S. P. Co.* 109 (111).

Subsequently applicable proportional rate, lower than local, no basis for reparation on local shipments moving about a year before. *Central Lumber Co. v. C. M. & St. P. Ry. Co.* 495.

Carrier may not lawfully make rates lower to given point on traffic destined beyond by wagon or other similar conveyance. *Bayou City Rice Mills v. T. & N. O. R. R. Co.* 490 (493).

Advance of proportional rate on salt, West Virginia to Lynchburg and Roanoke, Va., destined beyond, condemned. *Liverpool Salt & Coal Co. v. B. & O. R. R. Co.* 51.

Rate from Norfolk, Nebr., when from beyond, to points in Nebraska and South Dakota found unreasonable. *Acme Cement Plaster Co. v. C. & N. W. Ry. Co.* 105.

Applying a "proportional" rate out of milling point can not determine through character of shipment. *Gund & Co. v. C. B. & Q. R. R. Co.* 364 (367).

Lower to end of line, when destined beyond, that local, made to meet through water competition. *Lauer & Son v. S. P. Co.* 109.

Limited in application to traffic from defined territory not *per se* unlawful. *Serry v. S. P. Co.* 554 (556).

Ex-lake rates from Buffalo lower than locals no measure of local rates. *Jennison Co. v. G. N. Ry. Co.* 113 (124).

Ex-lake rate, lower than local; no opinion expressed as to legality. *Stott v. M. C. R. R. Co.* 582 (587).

Should not be limited to traffic from particular places. *Bayou City Rice Mills v. T. & N. O. R. R. Co.* 490 (493).

Commission establishes local rate "for beyond." *Stone-Ordean-Wells Co. v. S. P. Co.* 13, 15.

Applicable on traffic from beyond. *Central Lumber Co. v. C. M. & St. P. Ry. Co.* 495.

**PROTEST.**

Not necessary to award of reparation. *National Refining Co. v. A. T. & S. F. Ry. Co.* 389 (390).

**PUBLIC INTEREST.**

Fact that ordered reduction would give rise to other complaints no justification for unlawful rates. *Columbia Grocery Co. v. L. & N. R. R. Co.* 502 (505).

Commission must consider interest of consumer as well as producer. *Andy's Ridge Coal Co. v. So. Ry. Co.* 405 (410).

**PULLMAN ACCOMMODATIONS.**

Through accommodations forbidden on mileage tickets from west to east of Pittsburg, rule held reasonable. *Echner v. P. R. R. Co.* 60.

Certain rates found unreasonable, and all rates for uppers reduced below lowers. *Loftus v. Pullman Co.* 135.

**QUOTATION. See, also, MISQUOTATION.**

Incorrect quotation did not serve to vary published tariff or give shipper a right to forward goods at lower rate. *Blinn Lumber Co. v. S. P. Co.* 430 (433).

**REASONABLE RATE.**

Same rate for short as for long haul goes to question of reasonableness of rate, not violation of 4th section. *Idaho Commercial Clubs v. O. S. L. R. R. Co.* 562 (565).  
 If rates are reasonable it makes no difference by what motive they were induced. *Receivers & Shippers Asso. of Cincinnati v. C. N. O. & T. P. Ry. Co.* 440 (447).  
 Rate complained of examined into independent of comparisons with other points, and found unreasonable. *Rainey & Rogers v. St. L. & S. F. R. R. Co.* 83.  
 Order granting affirmative relief must be predicated upon definite conviction of unreasonableness. *Commercial Club of Omaha v. S. P. Co.* 53 (56).  
 Rate unreasonable yesterday, might be reasonable to-day, and *vice versa*. *Acme Cement Plaster Co. v. C. & N. W. Ry. Co.* 105 (107).

**RECONSIGNMENT.**

Tariff under which shipment moves to first point controls reconsignment privileges; not a separate tariff at that point. *Townley Metal & Hardware Co. v. C. R. I. & P. Ry. Co.* 378.  
 Shipment refused at destination, reconsigned on back haul, must pay rates for both movements. *Lull & Co. v. M. St. P. & S. Ste. M. Ry. Co.* 355.  
 Demurrage accruing before, on account of nonpayment of charge, properly collected. *Sage & Co. v. I. C. R. R. Co.* 195.  
 Failure of initial line to divert from routing instructions upon request. *National Manufacturing Co. v. C. G. W. Ry. Co.* 370.

**RECONSIGNMENT CHARGE.**

Within State not lawful factor in combination through interstate charge. *Hagar Iron Co. v. P. R. R. Co.* 529.

**RECORD.**

Naked allegations of complaint, though supplemented by admissions of defendant, not sufficient to warrant any findings. *International Harvester Co. v. C. M. & St. P. Ry. Co.* 222.  
 Not complete in failing to contain sufficient proof of unreasonableness of rates complained of. *Greater Des Moines Committee v. C. G. W. Ry. Co.* 98.  
 Complaint not sufficiently proved, dismissed. *Greater Des Moines Committee v. C. M. & St. P. Ry. Co.* 73.  
 Case dismissed because of incompleteness. *International Harvester Co. v. C. M. & St. P. Ry. Co.* 222.

**REFUSAL.**

Of shipment by connecting carrier because charges not prepaid; shipper not liable for demurrage without tariff authority. *Tioga Coal Co. v. C. R. I. & P. Ry. Co.* 414.

**REGULATIONS.**

Carriers issue mileage tickets voluntarily, and may therefore attach reasonable and nondiscriminatory regulations to their use. *Eschner v. P. R. R. Co.* 60.

**RELATIVE ADJUSTMENT.**

Defendants expected to make relative adjustment to other points than those to which order directed against. *Sackett Plaster Board Co. v. B. R. & P. Ry. Co.* 374.

**RELATIVE RATES.**

Rates from Walsenburg district, Colo., to certain Nebraska points as compared with rates from Wyoming fields to same destinations found discriminatory in some instances and not so in others where competition justifies. *Colorado Coal Traffic Association v. C. & S. Ry. Co.* 572.  
 In determining reasonableness of rates from the West to southern territory the interests of all competing lines must be considered and not merely that line which can handle the business cheapest. *Receivers & Shippers Association of Cincinnati v. C. N. O. & T. P. Ry. Co.* 440

## RELATIVE RATES—Continued.

- Rate complained of found to be as low as, or lower than, those generally prevailing in that region and about the same as those prescribed by Commission in other cases. *Consumers' Ice Co. v. A. T. & S. F. Ry. Co.* 277 (278).
- Not possible to compare ton-mile charge in territory complained of with charge in other territory where traffic is more dense and cost of operation less. *Acme Cement Plaster Co. v. C. G. W. Ry. Co.* 19 (20).
- If basing point system adopted it must be applied alike to all places where real dissimilarity of circumstances or controlling competition do not exist. *Columbia Grocery Co. v. L. & N. R. R. Co.* 502 (505).
- Commodity rate to one point over one line no basis of comparison with higher class rate to longer-distance point over two lines. *Wells-Higman Co. v. St. L. I. M. & S. Ry. Co.* 175 (176).
- Lower rate via one-line haul than via route taken, consisting of two-line haul, no measure of reasonableness standing alone. *Snyder-Malone-Donahue Co. v. C. B. & Q. R. R. Co.* 498.
- Rate on roofing paper and materials, Carthage, Ohio, to Nashville, Tenn., compared with rates from other producing points to Nashville. *Chatfield Manufacturing Co. v. L. & N. R. R. Co.* 385.
- Terre Haute, Ind., to Louisville, Cincinnati, and Dayton compared with Pittsburg, Cleveland, and other points, iron and steel. *Highland Iron & Steel Co. v. Vandalia R. R. Co.* 601.
- Rates on flour milled in Minneapolis to New York compared with rates on wheat to Buffalo plus flour rate to New York. *Jennison Co. v. G. N. Ry. Co.* 113.
- Rates in effect via another line than that taken by given shipment no measure of reasonableness of rate applied. *Ohio Iron & Metal Co. v. Wabash R. R. Co.* 299 (300).
- Lower rates via another route are not necessarily reasonable rates via route taken by shipments in a particular case. *Southern Cotton Oil Co. v. A. C. L. R. R. Co.* 275 (276).
- Rate complained of compared with rates on same commodity between other points on defendant's line. *Laning-Harris Coal & Grain Co. v. C. B. & Q. R. R. Co.* 11.
- Rate from Sartells, Minn., to California points compared with rate from other nearby points to same destinations. *Willamette Valley Pulp & Paper Co. v. N. P. Ry. Co.* 388.
- Reidsville, N. C., compared with Winston-Salem, N. C., and Martinsville, Va., on raw sugar from New York. *Penn Tobacco Co. v. Old Dominion S. S. Co.* 197.
- Petroleum rate, Coffeyville, Kans., to Memphis and Omaha, compared with rates from Whiting and other northern points. *National Petroleum Association v. M. P. Ry. Co.* 593.
- Switching charge complained of found to be substantially the same as in surrounding territory and not unreasonable. *Utica Traffic Bureau v. N. Y. O. & W. Ry. Co.* 168.
- Des Moines, Iowa, to Minnesota, North and South Dakota compared with Chicago and other Iowa points. *Greater Des Moines Committee v. C. M. & St. P. Ry. Co.* 73.
- Existence of lower rate via competing route does not of itself establish unreasonableness of rate charged. *Colorado Bedding Co. v. C. B. & Q. R. R. Co.* 403 (404).
- Rates from middle west compared with those from Atlantic coast to Chattanooga. *Receivers & Shippers Association of Cincinnati v. C. N. O. & T. P. Ry. Co.* 440.
- Rates on cypress lumber from Little Rock territory to points west compared with Memphis. *Ferguson Saw Mill Co. v. St. L. I. M. & S. Ry. Co.* 396.

**RELATIVE RATES—Continued.**

Red Wing, Minn., from Trunk Line territory compared with St. Paul and nearby points. *Frederick & Kempe Co. v. N. Y. N. H. & H. R. R. Co.* 481.

No evidence, other than lower rate via another route; *Held*, not sufficient to establish unreasonableness. *Pankey & Holmes v. C. N. E. Ry. Co.* 578.

New Albany, Miss., compared with Memphis and Tupelo, Miss., on coal from Carbon Hill district, Ala. *Rainey & Rogers v. St. L. & S. F. R. R. Co.* 88.

Rate compared with that via other lines between other points similarly situated. *Plummer Co. v. N. P. Ry. Co.* 530.

Lower rate in effect via competing line no measure of rate complained of. *Delray Salt Co. v. M. C. R. R. Co.* 247.

Advance resulting from order in another case, condemned. *Commercial Club of Omaha v. A. & S. R. Ry. Co.* 532.

Detroit compared with Chicago on salt from New York State. *Delray Salt Co. v. P. R. R. Co.* 259.

**RELEASED RATE.**

Quotation of released rate should be accompanied with notice of its nature. *Southern Cotton Oil Co. v. L. & N. R. R. Co.* 180.

**REPARATION.**

Not asked in complaint, but upon argument amended petition filed, which was allowed. Limitation runs to date of amendment. *Virginia-Carolina Chemical Co. v. St. L. I. M. & S. Ry. Co.* 1 (2); *Same v. C. R. I. & P. Ry. Co.* 3 (4); *Same v. St. L. & S. F. R. R. Co.* 5 (6).

Greater liability on all lines to refund above reasonable rates than that of initial line to refund for failure to divert from instructions upon request. *National Mfg. Co. v. C. G. W. Ry. Co.* 370.

Roads participating in collection of unreasonable rate should refund on basis of agreed divisions of lower reasonable rates. *National Mfg. Co. v. C. G. W. Ry. Co.* 370 (371).

Prayer for, suspended during final determination of question in Supreme Court, thus preventing running of limitation statute against claim. *Gund & Co. v. C. B. & Q. R. R. Co.* 364 (369).

Reparation awarded on account of unreasonable joint through rate. Since no basis for determination of divisions, case retained. *Stone-Ordean-Wells Co. v. S. P. Co.* 15 (16).

None will be awarded where demand is not based upon a real damage or injury suffered by a shipper. *Copper Queen Consolidated Mining Co. v. B. & O. R. R. Co.* 154.

Case retained for further proceedings. *Virginia-Carolina Chemical Co. v. St. L. I. M. & S. Ry. Co.* 1 (2); *Same v. C. R. I. & P. Ry. Co.* 3 (4); *Same v. St. L. & S. F. R. R. Co.* 5 (6).

Former relationship changed, then resumed. Reparation awarded on shipments taking higher rate. *Texas Grain & Elevator Co. v. C. R. I. & P. Ry. Co.* 580.

Awarded down to basis higher than rate now in effect; no order for future. *Wheeling Corrugating Co. v. B. & O. R. R. Co.* 125.

Substantial justice will be accomplished in this case by reduction of rate without reparation. *Delray Salt Co. v. M. C. R. R. Co.* 268 (270).

High advance, over protest, followed by compromise reduction, no basis for. *Wills & Saddlery Co. v. C. & S. Ry. Co.* 220.

Lower rates constructed in unlawful manner no basis for reparation from higher rates. *Lauer & Son v. S. P. Co.* 109 (111).

Plaintiff found entitled, but case held open for proof. *Sackett Plaster Board Co. v. B. R. & P. Ry. Co.* 374.

**REPARATION—Continued.**

- Awarded on account of discriminatory rate. *Stacy Mercantile Co. v. M. St. P. & S. Ste. M. Ry. Co.* 550.
- Declined on shipment moving prior to filing of complaint in another case. *Maris v. S. P. Co.* 301 (303).
- Asked and though rates found unreasonable, not awarded. *Frederich & Kempe Co. v. N. Y. N. H. & H. R. R. Co.* 481.
- None for loss of tags resulting in damage to complainant. *Acme Cement Plaster Co. v. Wabash R. R. Co.* 557.
- Voluntary reduction not of itself ground for. *Sunderland Bros. Co. v. C. B. & Q. R. R. Co.* 512 (513).
- Claim for, brought under former suit by state. *National Refining Co. v. A. T. & S. F. Ry. Co.* 389.
- Denied though rate found unreasonable. *Bash Fertilizer Co. v. Wabash R. R. Co.* 522 (526).
- None ordered where lawful charges not paid. *Rosenblatt & Sons v. C. & N. W. Ry. Co.* 261.
- None awarded where charges not paid. *Peale, Peacock & Kerr v. C. R. R. Co. of N. J.* 25 (33).
- Denied, but rate found unreasonable. *Acme Cement Plaster Co. v. C. & N. W. Ry. Co.* 105 (107).
- Damages of general nature not awarded. *American Creosote Works v. I. C. R. R. Co.* 212.
- Awarded, but held open for proof. *Commercial Club of Omaha v. A. & S. R. Ry. Co.* 532 (537).
- Awarded under *Thompson case*, 13 I. C. C., 657. *Thompson Lumber Co. v. I. C. R. R. Co.* 83.

**REPARATION—CLASSIFIED LIST.****Discrimination:**

- American Creosote Works v. I. C. R. R. Co.* 212.
- Delray Salt Co. v. P. R. R. Co.* 259.
- Henderson Elevator Co. v. L. & N. R. R. Co.* 538.
- Lynch & Read v. B. & O. R. R. Co.* 38.
- Sackett Plaster Board Co. v. B. R. & P. Ry. Co.* 374.
- Stacy Mercantile Co. v. M. St. P. & S. Ste. M. Ry. Co.* 550.

**Misrouting:**

- Cameron & Co. v. T. & P. Ry. Co.* 560.
- Cressey & Co. v. C. M. & St. P. Ry. Co.* 132.
- Delray Salt Co. v. M. C. R. R. Co.* 248.
- Duluth & Iron Range R. R. Co. v. C. St. P. M. & O. Ry. Co.* 485.
- Lebanon Paper Co. v. E. J. & E. Ry. Co.* 591.
- Marshall & Michel Grain Co. v. St. L. & S. F. R. R. Co.* 228.
- Noble v. T. & W. R. R. Co.* 494.
- Platten Produce Co. v. K. L. S. & C. Ry. Co.* 249.
- Spreckles Bros. Commercial Co. v. Monongahela R. R. Co.* 190.

**Overcharge:**

- Kiel Woodenware Co. v. C. M. & St. P. Ry. Co.* 242.
- Platten Produce Co. v. K. L. S. & C. Ry. Co.* 249.
- Royal Metal Manufacturing Co. v. C. G. W. R. R. Co.* 255.
- Southern Cotton Oil Co. v. L. & N. R. R. Co.* 180.
- Sunderland Bros. Co. v. M. K. & T. Ry. Co.* 425.
- Tioga Coal Co. v. C. R. I. & P. Ry. Co.* 414.

## REPARATION—CLASSIFIED LIST—Continued.

## Unreasonable rate:

- Alexander Sprunt & Son *v.* S. A. L. Ry. 251.  
 American Creosote Works *v.* I. C. R. R. Co. 212.  
 Anderson-Tully Co. *v.* C. R. I. & P. Ry. Co. 48.  
 Block & Co. *v.* L. & N. R. R. Co. 372.  
 Chatfield Manufacturing Co. *v.* L. & N. R. R. Co. 385.  
 Clark Co. *v.* B. & S. Ry. Co. 380.  
 Colorado Bedding Co. *v.* C. B. & Q. R. R. Co. 401.  
 Commercial Club of Omaha *v.* S. P. Co. 53.  
 Commercial Club of Omaha *v.* A. & S. Ry. Co. 532.  
 Crombie & Co. *v.* A. T. & S. F. Ry. Co. 57.  
 Delray Salt Co. *v.* M. C. R. R. Co. 247.  
 Delray Salt Co. *v.* P. R. R. Co. 259.  
 Fathauer Co. *v.* St. L. I. M. & S. Ry. Co. 517.  
 Glavin Grain Co. *v.* C. & N. W. Ry. Co. 241.  
 Laning-Harris Coal & Grain Co. *v.* C. B. & Q. R. R. Co. 11.  
 Lorleburg Co. *v.* N. Y. C. & St. L. R. R. Co. 183.  
 Maris *v.* S. P. Co. 301.  
 Memphis Freight Bureau *v.* St. L. S. W. Ry. Co. 67.  
 Milburn Wagon Co. *v.* L. S. & M. S. Ry. Co. 144.  
 National Manufacturing Co. *v.* C. G. W. Ry. Co. 370.  
 National Refining Co. *v.* A. T. & S. F. Ry. Co. 389.  
 Noble *v.* V. S. & P. Ry. Co. 224.  
 Ocheltree Grain Co. *v.* T. & P. Ry. Co. 412.  
 Okerson *v.* P. R. R. Co. 127.  
 Penn Tobacco Co. *v.* Old Dominion S. S. Co. 197.  
 Plummer Co. *v.* N. P. Ry. Co. 530.  
 Roach & Seeber Co. *v.* C. M. & St. P. Ry. Co. 172.  
 Rosenblatt & Sons *v.* C. & N. W. Ry. Co. 261.  
 Rotsted Co. *v.* C. & N. W. Ry. Co. 257.  
 Ryan *v.* G. N. Ry. Co. 226.  
 Sackett Plaster Board Co. *v.* B. R. & P. Ry. Co. 374.  
 Serry *v.* S. P. Co. 554.  
 Southern Cotton Oil Co. *v.* A. C. L. R. R. Co. 275.  
 Southern Timber & Land Co. *v.* S. P. Co. 232.  
 Stevens Grocer Co. *v.* G. R. & I. Ry. Co. 147.  
 Stone-Ordean-Wells Co. *v.* S. P. Co. 13, 15.  
 Sunderland Bros. Co. *v.* St. L. & S. F. Ry. Co. 545.  
 Texas Grain & Elevator Co. *v.* C. R. I. & P. Ry. Co. 580.  
 Thompson Lumber Co. *v.* I. C. R. R. Co. 83.  
 Tritch Hardware Co. *v.* C. R. I. & P. Ry. Co. 71.  
 Vulcan Steam Shovel Co. *v.* M. P. Ry. Co. 265.  
 Wheeling Corrugating Co. *v.* B. & O. R. R. Co. 125.  
 Willamette Pulp & Paper Co. *v.* N. P. Ry. Co. 388.  
 Windsor Turned Goods Co. *v.* C. & O. Ry. Co. 162 (164).  
 Winters Metallic Paint Co. *v.* C. M. & St. P. Ry. Co. 596.  
 Zang Brewing Co. *v.* C. B. & Q. R. R. Co. 337.

## Unreasonable rule:

- Brunswick-Balke-Collender Co. *v.* C. M. & St. P. Ry. Co. 165.  
 Houston Structural Steel Co. *v.* Wabash R. R. Co. 206.  
 Knox *v.* Wabash R. R. Co. 185.  
 Maldonado & Co. *v.* Ferrocarril de Sonora, 65.  
 Racine-Sattley Co. *v.* C. M. & St. P. Ry. Co. 142.

**RESHIPMENT.**

Shipment to local point, unloaded, later reshipped at local rates not entitled to benefit of lower proportional established more than a year thereafter. *Central Lumber Co. v. C. M. & St. P. Ry. Co.* 495.

**RETROACTIVE.**

Lower proportional established after separate movement from concentration point not applicable where movement out was more than a year prior to establishment thereof. *Central Lumber Co. v. C. M. & St. P. Ry. Co.* 495.

Concentration privilege made retroactive by awarding reparation on shipment from point at which it did not exist. *Block & Co. v. L. & N. R. R. Co.* 372.

**RISK.**

Lima beans less subject to deterioration than any other vegetable moving in volume. *Commercial Club of Omaha v. S. P. Co.* 53 (55).

One of numerous considerations of prime importance in classification. *Forest City Freight Bureau v. A. A. R. R. Co.* 205 (206).

Greater in handling acidulated phosphate rock than crude rock. *Bash Fertilizer Co. v. Wabash R. R. Co.* 522 (524).

Little risk of loss or damage to cement plaster. *Acme Cement Plaster Co. v. C. & N. W. Ry. Co.* 105 (106).

**ROUTE.**

Complaint of violation of 4th section in that lower rates applied from longer distance point not sustained where under tariffs traffic would not move through shorter distance point. *Colorado Bedding Co. v. C. B. & Q. R. R. Co.* 401.

Lower rate in effect via longer route, in its inception an error, but maintained for two years, indicative of reasonableness via shorter route. *Clark Co. v. B. & S. Ry. Co.* 380. (381.)

Three-line longer-distance haul compared with two-line shorter distance haul. *Colorado Bedding Co. v. C. B. & Q. R. R. Co.* 403. (403.)

Lower rate via another route not sufficient to establish unreasonableness. *Pankey & Holmes v. C. N. E. Ry. Co.* 578.

**ROUTING.**

Instructions of shipper based upon erroneous information obtained from carrier's agent, binding on shipper and carrier. *Ohio Iron & Metal Co. v. Wabash R. R. Co.* 299.

No reparation for misrouting where shipper instructs via route taken. *Donahue v. C. M. & St. P. Ry. Co.* 92.

**RULES.**

Carriers issue mileage tickets voluntarily, and may therefore attach reasonable and nondiscriminatory regulations to their use. *Eschner v. P. R. R. Co.* 60.

**SECTION FOUR. See also LONG AND SHORT HAUL.**

Commodity rate same to two points no violation of section 4. *Wheeling Corrugating Co. v. B. & O. R. R. Co.* 125 (126).

**SECTION SIX. See also TERMINAL CHARGES.**

In absence of joint rate from local station on one line to point on another line, it is not incumbent on initial line to post at point of origin tariffs showing combination of locals. *Canadian Valley Grain Co. v. C. R. I. & P. Ry. Co.* 509.

Purpose to secure to the public knowledge of the correct rates. *Schultz-Hansen Co. v. S. P. Co.* 234 (237).

**SHIPPER'S INSTRUCTIONS. See also INSTRUCTIONS.**

Instructions based upon erroneous information obtained from carrier's agent nevertheless binding. *Ohio Iron & Metal Co. v. Wabash R. R. Co.* 299.

No refund for misrouting where shipper instructs route taken. *Donahue v. C. M. & St. P. Ry. Co.* 92.



**SLEEPING-CAR RATES.**

Certain rates reduced, and all rates for uppers reduced below lowers. *Loftus v. Pullman Co.* 135.

**SPECIAL SERVICE.**

An additional charge may be made when an additional service is given. *Associated Jobbers of Los Angeles v. A. T. & S. F. Ry. Co.* 310 (318).

**STARE DECISIS.**

When given situation has been passed upon, decision ought to be of very great weight. *Receivers & Shippers Asso. of Cincinnati v. C. N. O. & T. P. Ry. Co.* 440 (445).

**STATE COMMISSION.**

Establishing low state rate not measure of interstate rate from competing point. *Saunders & Co. v. Southern Express Co.* 415.

**STATE COMMERCE.**

Interstate shipment accepted, charges paid, and reforwarded to point within same State. *Wells-Higman Co. v. St. L. I. M. & S. Ry. Co.* 175 (176).

**STATE RATES.**

Established by state commission not measure of interstate rates from competing point to same destinations. *Saunders & Co. v. Southern Express Co.* 415.

Discrimination not removed, though found to exist, where it would necessitate reduction of state rate. *Andy's Ridge Coal Co. v. So. Ry. Co.* 405 (407).

One factor of combination through rate entirely within State alleged unreasonable. *Continental Lumber & Tie Co. v. T. & P. Ry. Co.* 129.

Factor of combination on interstate shipment, found unreasonable. *Roach & Seeber Co. v. C. M. & St. P. Ry. Co.* 172.

Though low, may not be equalized by high-interstate rates. *Commercial Club of Omaha v. A. & S. R. Ry. Co.* 532 (536).

Not on file with Commission not lawful factor in combination through interstate charge. *Hagar Iron Co. v. P. R. R. Co.* 529.

Local rates within the State when from beyond, found unreasonable. *Acme Cement Plaster Co. v. C. & N. W. Ry. Co.* 105.

**STEAM SHOVEL.**

Moving on its own wheels, and parts loaded on carrier's car, should take one rate. *Vulcan Steam Shovel Co. v. M. P. Ry. Co.* 265.

**STIPULATION.**

Naked allegations of complaint, though supplemented by admissions of defendant, not sufficient to warrant any findings. *International Harvester Co. v. C. M. & St. P. Ry. Co.* 222.

Admitted to show character of shipment made. *Royal Metal Manufacturing Co. v. C. G. W. R. R. Co.* 255.

**STORAGE.**

Not carrier's duty nor Commission's power to grant; when voluntarily furnished, legality of rules within Commission's jurisdiction. *Peale, Peacock & Kerr v. C. R. R. Co. of N. J.* 25 (35).

**STORAGE CHARGES.**

Imposition of penalty at compress by compress company on concentrated cotton not found to justify order against carriers. *Anderson, Clayton & Co. v. C. R. I. & P. Ry. Co.* 340.

**SUBSTITUTION OF TONNAGE.**

Shipment at compress destroyed by fire; prayer for permissive substitution and shipment outbound on old billing denied. *Henderson & Barkdull v. St. L. I. M. & S. Ry. Co.* 514.

Condemned. *In re Substitution of Tonnage*, 280.

**SWITCHING CHARGE.**

Charge from New York Central tracks at Utica, N. Y., to Utica Steam & Mohawk Valley Cotton Mill in that city, not found unreasonable. *Utica Traffic Bureau v. N. Y. O. & W. Ry. Co.* 168.

Absorption of part by line carrier in effect names through rate to mill; only the amount left may be complained of. *Utica Traffic Bureau v. N. Y. O. & W. Ry. Co.* 168.

At Southport, La., out of line with those at Carbondale, but on equality with other points in New Orleans not discriminatory. *American Creosote Works v. I. C. R. R. Co.* 212.

**TAGGING.**

Charge imposed by compress company for laying on "patches" not found to justify order against carrier. *Anderson, Clayton & Co. v. C. R. I. & P. Ry. Co.* 340.

Damages resulting from loss of tags not cognizable before Commission. *Acme Cement Plaster Co. v. Wabash R. R. Co.* 557.

Sufficient marking. *Racine-Sattley Co. v. C. M. & St. P. Ry. Co.* 142.

**TAP LINE.**

Allowance held unlawful. *Fathauer Co. v. St. L. I. M. & S. Ry. Co.* 517.

**TARIFFS.**

In absence of joint rate from local station on one line to point on another line, it is not incumbent on initial line to post at point of origin tariffs showing combination of locals. *Canadian Valley Grain Co. v. C. R. I. & P. Ry. Co.* 509.

Privileges published in tariff under which shipment originally moves govern, rather than separate tariff at destination. *Townley Metal & Hardware Co. v. C. R. I. & P. Ry. Co.* 378.

Whenever any service is rendered beyond ordinary receiving, transporting, and delivering, the precise character of that service should appear in tariff. *Schultz-Hansen Co. v. S. P. Co.* 234 (237).

Commission could not require withdrawal of tariffs containing express rates competitive with mail rates. *Williams v. Wells, Fargo & Co.* 17 (18).

Shipments of "rough rolled, ribbed, or wired skylight glass," not entitled to rate on "skylight glass, n. o. s." *Fuller & Co. v. S. P. Co.* 202.

Naming advance, filed with Commission, not posted; undercharge collected ordered refunded. *Kiel Woodenware Co. v. C. M. & St. P. Ry. Co.* 242.

Delivering line publishing tariff in conflict with that of initial line not lawful. *Sunderland Bros. Co. v. M. K. & T. Ry. Co.* 425.

Demurrage held not properly assessable, there being no tariff provision therefor. *United States v. D. & R. G. R. R. Co.* 7.

Demurrage collected without tariff provision unlawful. *Tioga Coal Co. v. C. R. I. & P. Ry. Co.* 414.

Provision leaving tariff uncertain; must be reconstructed. *Noble v. V. S. & P. Ry. Co.* 224.

Making it optional with carrier to load or unload unlawful. *Schultz-Hansen Co. v. S. P. Co.* 234 (237).

**TEHUANTEPEC ROUTE.**

Combination of rail and water route creates competition on transcontinental business. *Kentucky Wagon Mfg. Co. v. I. C. R. R. Co.* 360 (362).

**TERMINAL CHARGE.**

When separate independent terminal charge reasonable and aggregate charge is unreasonable, preceding rate must be condemned. *Associated Jobbers of Los Angeles v. A. T. & S. F. Ry. Co.* 310 (318).

So-called Hepburn Act requires that carriers' tariffs shall name all terminal charges for any service rendered. *Schultz-Hansen Co. v. S. P. Co.* 234 (236).

Services of loading and unloading and charges therefor analogous to other terminal charges and must be published. *Schultz-Hansen Co. v. S. P. Co.* 234 (237).

**TERMINAL CHARGE—Continued.**

*Associated Jobbers of Los Angeles v. A. T. & S. F. Ry. Co.*, *ante*, followed. *Pacific Coast Jobbers' & Manufacturers' Asso. v. S. P. Co.* 333.

As used in section 6, refers to American method of stating rates. *Associated Jobbers of Los Angeles v. A. T. & S. F. Ry. Co.* 310 (315).

Duty of regulating, lodged with Commission. *Peale, Peacock & Kerr v. C. R. R. Co.* of N. J. 25 (33).

**TERMINAL FACILITIES.**

The spurs and sidetracks which connect industries with carrier's rails within switching limits found to constitute a portion of the carrier's terminal facilities. *Associated Jobbers of Los Angeles v. A. T. & S. F. Ry. Co.* 310.

**THROUGH AND LOCAL.**

Through rate of \$1.59, minimum 30,000, exceeded combination of \$1.15, with minimums of 24,000 and 30,000; reparation awarded on basis of lower combination and minimums, though through rate subsequently reduced to \$1.10 with 30,000 minimum. *Ryan v. G. N. Ry. Co.* 226.

Through rates on cotton drills, cotton-duck cloth, overalls, and jackets, Wheeling, W. Va., Cincinnati, Ohio, and Michigan City, Ind., to Beloit, Wis., exceeded combination on Chicago, and found unreasonable. *Rosenblatt & Sons v. C. & N. W. Ry. Co.* 261.

Combination at time of movement was higher than through rate, and subsequent reduction of one factor, resulting in corresponding reduction of through rate based on sum of those factors, was mere voluntary reduction of rate. *Lamb Co. v. M. C. R. R. Co.* 279.

As no sufficient evidence introduced to show unreasonableness of through rate in excess of combination of locals, complaint dismissed. *White Bros. v. S. P. Co.* 308.

Measure of reasonableness of joint through rate is lowest combination that would otherwise apply. *Windsor Turned Goods Co. v. C. & O. Ry. Co.* 162 (164).

To maintain a system by which through rates shall exceed sums of locals is purpose of elevator allowances. *Gund & Co. v. C., B. & Q. R. R. Co.* 364 (369).

Reparation awarded on shipment upon which was assessed through rate in excess of combination. *Stevens Grocer Co. v. G. R. & I. Ry. Co.* 147.

Through class rates from Albuquerque, N. Mex., to El Paso, Tex., exceed combination on Las Cruces. *Crombie & Co. v. A., T. & S. F. Ry. Co.* 57.

Through L. C. L. rate exceeded combination of C. L. and L. C. L. rate. *Held*, not unlawful. *Winona Carriage Co. v. P. R. R. Co.* 334.

Reparation awarded on shipment assessed through rate in excess of combination. *Milburn Wagon Co. v. L. S. & M. S. Ry. Co.* 144.

Joint through rate into Canada exceeded combination of locals. *Windsor Turned Goods Co. v. C. & O. Ry. Co.* 162.

Through rate should not exceed sum of locals. *Greater Des Moines Committee v. C., M. & St. P. Ry. Co.* 73 (80).

Through rate exceeded combination. *Lorleburg v. N. Y. C. & St. L. R. R. Co.* 183.

**THROUGH RATE.** See also **COMBINATION RATE**; **JOINT THROUGH RATE**.

Certain shipments should have carried through rate, though reshipped out of Memphis; others found to have been billed locally. *Marshall & Michel Grain Co. v. St. L. & S. F. R. R. Co.* 228.

Absorption of part of switching charge in effect names through rate to the mill. *Utica Traffic Bureau v. N. Y., O. & W. Ry. Co.* 168.

One factor of combination through charge found unreasonable. *Stone-Ordean-Wells Co. v. S. P. Co.* 13, 15.

May not be constructed of factors not on file with Commission. *Hagar Iron Co. v. P. R. R. Co.* 529.

**THROUGH ROUTE.**

Prayer for, dismissed upon showing of existence of, over other lines of a "reasonable through route." *Spring Hill Coal Co. v. Erie R. R. Co.* 508.

**THROUGH SHIPMENT.**

Applying so-called "proportional" rate out of milling point does not determine through character of shipment. *Gund & Co. v. C. B. & Q. R. R. Co.* 364 (367).

**TON PER MILE.**

Not possible to compare ton-mile charge in territory complained of with charge in other territory where traffic is more dense and cost of operation less. *Acme Cement Plaster Co. v. C. G. W. Ry. Co.* 19 (20).

Ordinarily long-distance rate should be less per ton per mile than rate for short distance. *Receivers & Shippers Asso. of Cincinnati v. C. N. O. & T. P. Ry. Co.* 440 (466).

Eight mills not low, considering freedom of lima beans from risk of deterioration. *Commercial Club of Omaha v. S. P. Co.* 53 (55).

Permitted to be higher relatively for short than for long hauls. *Rainey & Rogers v. St. L. & S. F. R. R. Co.* 88 (90).

Comparisons made and rate complained of found unreasonable. *Laning-Harris Coal & Grain Co. v. C. B. & Q. R. R. Co.* 11.

Revenue from all traffic compared with coal. *Rainey & Rogers v. St. L. & S. F. R. R. Co.* 88.

Five mills for coal not found unreasonable. *Sunderland Bros. Co. v. C. B. & Q. R. R. Co.* 512.

Salt, Detroit to Buffalo, high. *Delray Salt Co. v. M. C. R. R. Co.* 268 (269).

**TRAMP STEAMER COMPETITION.**

Tramp steamers control rates on the Great Lakes. *Jennison Co. v. G. N. Ry. Co.* 113.

**TRANSIT PRIVILEGES.**

If, as condition of continuing, it is found necessary to establish specific in and out rates at primary markets like Chicago, there must of necessity be more or less discrimination. *Stott v. M. C. R. R. Co.* 582 (589).

Granting of storage privilege at Houston on rice reconsigned to New Orleans, and not at New Orleans when reconsigned to Houston, not shown discriminatory. *Bayou City Rice Mills v. T. & N. O. R. R. Co.* 490.

Claim for, untenable in view of evidence that of outgoing tonnage more than half originates at transit point. *Bash Fertilizer Co. v. Wabash R. R. Co.* 522 (523).

Fertilizer from phosphate fields to Prairie Switch, Ind., for mixture and reshipment beyond. *Bash Fertilizer Co. v. Wabash R. R. Co.* 522.

Concentration and compression may be allowed by carriers and protect through rates. *Anderson, Clayton & Co. v. C. R. I. & P. Ry. Co.* 340.

Commission does not condemn transit privileges as such; but substitution of tonnage prohibited. *In re Substitution of tonnage* 280.

**TWO CARS FOR ONE.**

Two small cars furnished instead of one large car for shipment of dried pease from Guaymas, Mex., to Philadelphia. *Maldonado & Co. v. Ferrocarril de Sonora* 65.

**UNDERCHARGE.**

No consideration given to reasonableness of rate where charges not paid. *Rosenblatt & Sons v. C. & N. W. Ry. Co.* 261.

On complaint of overcharge, Commission discovers undercharge, which should be collected. *Donahue v. C. M. & St. P. Ry. Co.* 92.

Legal rate not collected. *Stacy Mercantile Co. v. M. St. P. & S. Ste. M. Ry. Co.* 550.

**UNIT.**

Joint through rates are units or entires; complaint may not attack divisions thereof. *Copper Queen Consolidated Mining Co. v. B. & O. R. R. Co.* 154.

**UNLOADING.**

Rule withdrawing certain assistance by carrier at Utica, N. Y., while retaining it at certain other points, not found reasonable. *Utica Traffic Bureau v. N. Y. C. & H. R. R. Co.* 271.

Carrier must have right when consignee neglects, and to make reasonable, non-discriminatory charge therefor, published in tariff. *Schultz-Hansen Co. v. S. P. Co.* 234.

Assistance by carriers on specified commodities at particular points not necessarily discriminatory where peculiar conditions prevail. *Schultz-Hansen Co. v. S. P. Co.* 234.

Not improper to make reasonable charge for unloading carload freight, provided service clearly stated in tariff. *Schultz-Hansen Co. v. S. P. Co.* 234.

Consignees generally required to unload carload freight. *Schultz-Hansen Co. v. S. P. Co.* 234 (235).

**USE.**

Commission will not sanction tariff rate published only for articles to be employed in a special undertaking. *American Creosote Works v. I. C. R. R. Co.* 212 (215).

Carrier no right to dictate use to which commodity shall be put. *American Creosote Works v. I. C. R. R. Co.* 212 (215).

**VALUATION.**

A road is entitled to a fair return upon the value of property devoted to public use, but it is not entitled to have that property paid for by the public. *Receivers & Shippers Asso. of Cincinnati v. C. N. O. & T. P. Ry. Co.* 440 (462).

**VALUE.**

If classification based on, number of classes would be too large and the refinement too subtle for practical operation. *Forest City Freight Bureau v. A. A. R. R. Co.* 205 (206).

Earnings on carload of lima beans compared with earnings on less valuable carload of potatoes. *Commercial Club of Omaha v. S. P. Co.* 53 (55).

**VESTED RIGHT.**

Neither the East nor the West has any vested right to sell a certain amount in southern territory. *Receivers & Shippers Asso. of Cincinnati v. C. N. O. & T. P. Ry. Co.* 440.

**VOLUME.**

Comparison of bottle caps with other commodities fails where comparative volume and other circumstances not shown. *Coors v. S. P. Co.* 352.

One of numerous considerations of prime importance in classification. *Forest City Freight Bureau v. A. A. R. R. Co.* 205 (206).

**VOLUNTARY RATES.**

Carrier, in compliance with state commission's order, rendering assistance in loading or unloading, not discriminating against another point where circumstances different. *Utica Traffic Bureau v. N. Y. C. & H. R. R. Co.* 271 (272).

Other defendants allowed to determine for themselves whether they will meet rates fixed by Commission over one line. *Frederich & Kempe Co. v. N. Y. N. H. & H. R. R. Co.* 481 (484).

What carrier may do to meet competition is one thing, and what it ought to be compelled to do is another thing. *Frederich & Kempe Co. v. N. Y. N. H. & H. R. R. Co.* 481 (484).

Low state rate, forced by state commission, not measure of reasonableness of rate from interstate points. *Saunders & Co. v. Southern Express Co.* 415.

**VOLUNTARY REDUCTION.**

As combination at time of movement was higher than through rate, subsequent reduction of one factor, resulting in corresponding reduction of through rate based on sum of those factors, was mere voluntary reduction of rate. *Lamb Co. v. M. C. R. R. Co.* 279.

**VOLUNTARY REDUCTION—Continued.**

Rate reduced fourteen months after shipment moved; reparation awarded down to intermediate basis; no order for future. *Wheeling Corrugating Co. v. B. & O. R. R. Co.* 125.

Not of itself proof of unreasonableness of former rate as to form proper basis for award of reparation. *Sunderland Bros. Co. v. C. B. & Q. R. R. Co.* 512 (513).

Class rate held unreasonable in view of lower distance rate formerly in effect and lower commodity rate established after movement. *Okerson v. P. R. R. Co.* 127.

Rate charged not found unreasonable; since complaint, rate reduced; voluntary reduction not basis for award of reparation. *Coors v. S. P. Co.* 352 (353).

Mere fact that lower rate now charged does not warrant finding that former higher rate was unreasonable. *Quammen & Austad Lumber Co. v. C. G. W. R. R. Co.* 599 (600).

Rate, excessive when distance alone considered, voluntarily reduced by defendant, and reparation awarded. *Glavin Grain Co. v. C. & N. W. Ry. Co.* 241.

Fact that lower rate now in effect than formerly does not warrant finding of unreasonableness. *Consumers' Ice Co. v. A. T. & S. F. Ry. Co.* 277 (278).

After advance, necessary to meet competition, not basis of award for reparation. *Kentucky Wagon Mfg. Co. v. I. C. R. R. Co.* 360.

Large advance, over protests, followed by compromise, no ground for reparation. *Wilson Saddlery Co. v. C. & S. Ry. Co.* 220.

Standing alone, no evidence of unreasonableness of higher rate. *Penn Tobacco Co. v. Old Dominion S. S. Co.* 197.

Advance, after long-maintained lower rate and subsequent voluntary reduction, condemned. *Serry v. S. P. Co.* 554.

Carrier reduced rate shortly after shipments moved. *Memphis Freight Bureau v. St. L. S. W. Ry. Co.* 67.

Insufficient alone to sustain charge of unreasonableness. *Lamb Co. v. M. C. R. R. Co.* 279.

No ground for reparation. *Wabash Coating Mills v. Wabash R. R. Co.* 91.

**WATER CARRIERS.**

Commission no jurisdiction of ocean carriers from ports in foreign countries to ports of entry in United States, and joint through rates to inland points not recognized as legal. *Borgfeldt & Co. v. S. P. Co.* 552 (553).

**WATER COMPETITION.**

Rates from Atlantic coast to southern points fixed by water routes, and no comparison with all-rail rates from interior points to same destinations. *Receivers & Shippers Asso. of Cincinnati v. C. N. O. & T. P. Ry. Co.* 440 (453).

Defendants justify free loading and unloading at one point and not at another on the ground of water competition. *Schultz-Hansen Co. v. S. P. Co.* 234 (240).

Potential competition through Tehuantepec Route justifies low rates to Pacific coast. *Kentucky Wagon Mfg. Co. v. I. C. R. R. Co.* 360 (362).

Creates prima facie dissimilarity of conditions justifying violation of fourth section. *Bayou City Rice Mills v. T. & N. O. R. R. Co.* 490.

Proportional rate to end of line lower than local made to meet water competition. *Lauer & Son v. S. P. Co.* 109.

Found to justify equalization of geographical disadvantage. *Ferguson Saw Mill Co. v. St. L. I. M. & S. Ry. Co.* 396 (399).

Tramp lines on the Great Lakes. *Jennison Co. v. G. N. Ry. Co.* 113.

**WATER RATE.**

No claim for misrouting predicated upon failure to obey instructions where factor in designated route not on file with Commission. *De Barry Co. v. Louisiana Western R. R. Co.* 527.

**WATER RATE—Continued.**

Factor, not filed, can not be considered in determination of reasonableness of joint rate. *Milburn Wagon Co. v. L. S. & M. S. Ry. Co.* 144 (146).

Not on file not lawful factor in combination through charge. *Hagar Iron Co. v. P. R. R. Co.* 529.

**WEIGHT.**

Without disturbing rate, Commission finds discrimination in not applying estimated weight to shipments of ties. *American Creosote Works v. I. C. R. R. Co.* 212.

Charging on actual weight to complainant and estimated weight to competitors found discriminatory. *American Creosote Works v. I. C. R. R. Co.* 212.

Classification of article not determined alone by the scales. *Forest City Freight Bureau v. A. A. R. R. Co.* 205 (206).

**WORDS AND PHRASES.**

"Terminal charges," as used in section 6, refers to American method of making rates, and comprehends services rendered after delivery. *Associated Jobbers of Los Angeles v. A. T. & S. F. Ry. Co.* 310 (315).

**ZONE RATES.**

Impropriety of placing particular commodity in a given zone without due regard to geographical boundaries of production. *Ferguson Saw Mill Co. v. St. L. I. M. & S. Ry. Co.* 391 (394).

Chief justification for, is that it places all producers on same footing at market. *Ferguson Saw Mill Co. v. St. L. I. M. & S. Ry. Co.* 396 (398).

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